IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

K. KAY SHEARIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 02-266-KAJ
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

I. INTRODUCTION

Before me is Plaintiff's Second Verified Motion for Partial Summary Judgment (D.I. 53) and Defendant's Cross Motion for Summary Judgment (D.I. 55). Kay Shearin ("Plaintiff") alleges in her Amended Complaint that the United States of America ("Defendant"), acting through the Internal Revenue Service, committed "unauthorized collection actions" in violation of 26 U.S.C. §7433. (Docket Item ["D.I."] 48 at ¶ 19.) Plaintiff argues that Defendant violated 26 U.S.C. §7433 by attempting to collect taxes she "never owed and could not have paid anyhow." (*Id*. at ¶ 18.) In Defendant's Cross Motion for Summary Judgment, it argues that Plaintiff did in fact owe the IRS taxes and, therefore, its collections activities were not unlawful. (D.I. 55 at 5-6.) Jurisdiction over this case is proper pursuant to 28 U.S.C. §§ 1331 and 1346. For the reasons that follow, Defendant's Motion for Summary Judgment will be granted and Plaintiff's Motion for Summary Judgment will be denied.

II. BACKGROUND[1]

In June of 1993, Plaintiff paid the IRS a total of $10,000 for her 1991 and 1992 estimated tax liability. (D.I. 48 at ¶ 4.) Between 1991 and 1995, Plaintiff "had been 'financially disabled' by medical problems" and, between 1995 and 1997, Plaintiff had a bankruptcy petition pending in the District of Delaware. (*Id*. at ¶ 6.) Both of these situations, she says, prevented her from filing her taxes with the IRS. (*Id*.) In April of 1997, Plaintiff filed her tax returns for the years 1990-96. (*Id*. at ¶ 5.) Applying the earlier $10,000 payment to her tax liability for the years 1990-96, Plaintiff owed a net balance of $174.48. (*Id*.)

Plaintiff later was notified by the Social Security Administration (the "SSA") that because she belatedly filed her tax returns for 1991 and 1992, she "could not report self-employment income for those years. (*Id*. at ¶ 7.) Plaintiff asked the SSA to reconsider its ruling. (*Id*.) On February 10, 1998, the SSA denied that request and informed Plaintiff that she had sixty days to appeal the decision or it would become final. (*Id*.) She did not appeal the decision and, as a result, it became final. (*Id*.)

After Plaintiff was informed that the SSA would not consider her self-employment income for the years 1991 and 1992, she amended her tax returns to remove that self-employment income. (*Id*. at ¶ 8.) As a result of her removing that income from her previous returns, Plaintiff calculated that she was owed a credit of $6,752.52 on her 1997 tax return. (*Id*.) Using that balance, Plaintiff calculated a balance on her 1999 tax return, which she claims should have been applied to her 2000 tax return, of $4,739.70.

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[1]The following rendition of the background information does not constitute findings of fact and is cast in the light most favorable to Plaintiff.

(*Id*.)

The IRS, however, maintained that the decision of the SSA not to recognize Plaintiff's self-employment income for 1991 and1992 did not remove her duty to pay taxes on that income. (*Id*. at ¶ 9.) The IRS also informed Plaintiff that if she did not agree with their ruling she had two years from, July 23, 1998, the day it informed her of the ruling, to sue for a different outcome. (*Id*. at ¶ 10.) In another letter dated July 8, 2000, the IRS informed Plaintiff that she owed a total of $10,009.65 in taxes and penalties dating from 1991. (*Id*. at ¶ 11.)

On December 3, 2001, Plaintiff filed a second bankruptcy petition. (*Id*. at ¶ 16.) The IRS did not appear or file any proof of claim. (*Id*.) On March 27, 2002, Plaintiff was discharged from her second bankruptcy. (*Id*.) After that discharge, the IRS continued to seek payments from Plaintiff for back taxes and penalties in excess of $15,000 and did not release a lien they had previously placed on her house. (*Id*. at ¶ 17.)

III. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56(c), a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c) (2004). In determining whether there is a triable dispute of material fact, a court must review the evidence and construe all inferences in the light most favorable to the non-moving party. *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. *Reeves v. Sanderson Plumbing*

Prods., Inc., 530 U.S. 133, 150 (2000).

To defeat a motion for summary judgment, Rule 56(c) requires that the nonmoving party "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (internal citation omitted). The non-moving party "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(c) (2004). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushita Elec. Inds. Co.*, Ltd., 475 U.S. at 587 (internal citation omitted). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

IV. DISCUSSION

Section 7433 states that "[i]f, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States ... ." 26 U.S.C. § 7433(a). Plaintiff alleges that the IRS engaged in "unauthorized collections actions" by attempting to collect taxes that, because of the SSA's decision to not recognize her self-employment income from 1991 and 1992 and a Bankruptcy Court order, she did not owe. (D.I. 48 at ¶ 18.) She further alleges that the IRS's collection efforts were in violation of the automatic stay provided in the Bankruptcy Code. (*Id.*)

A. Self-Employment Income Reporting

Plaintiff claims that she has no reportable self-employment income for the years 1991 and 1992. (D.I. 53 at ¶ 3.) To support her argument, Plaintiff cites 42 U.S.C. §405(c)(4).[2] (D.I. 53 at ¶ 8.) That section states that "[a]fter the expiration of the time limitation following any year-- (A) the Commissioner's records ... of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this title [42 USCS §§ 401 et seq.] ... ."[3] 42 U.S.C. §405(c)(4). Plaintiff contends that Section 405(c)(4) also prevents the IRS from collecting self-employment taxes after the time limitation contained in that Section. (*Id*. at ¶¶ 9, 12.)

Plaintiff claims that because the SSA would not recognize self-employment income from the years 1991 and 1992, as it was reported after the "time limitation," the IRS should not be able to impose taxes on that same self-employment income.[4] (*Id*.; D.I. 48 at ¶ 7) Plaintiff argues that the IRS should be bound by a finding of the SSA and

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[2]Plaintiff actually cited 42 U.S.C. §405(c)(2)(H)(4)(A), but this section does not exist. As 42 U.S.C. §405(c)(4)(A) appears to be the section that most closely parallels Plaintiff's argument, I will assume that is the section to which she was referring.

[3]The "time limitation" in 42 U.S.C. §405(c)(4) "means a period of three years, three months, and fifteen days." 42 U.S.C. §405(c)(1)(B).

[4]Plaintiff also argues that the Internal Revenue Manual Section 25.6.15.4 supports the conclusion that the IRS cannot assess self-employment income tax after the statute of limitations contained 42 U.S.C. §405(c)(1)(B) has run. (D.I. 53 at ¶ 8; Ex. F-2.) As Defendant rightly points out, however, Internal Revenue Manual Section 25.6.15.4 explains the procedure when a taxpayer files a return claiming self-employment income "more than 3 years after the taxpayer files a Form 1040 and fully reports all income but makes no entry with respect to SET [self-employment tax]." (D.I. 53, Ex. F-2; D.I. 55 at 3.) As Plaintiff reported her self-employment income in her first filed 1040 (D.I. 48 at ¶¶ 5, 8), the procedure described in the Internal Revenue Manual is not applicable.

that “even if he [the Commissioner of Social Security] makes an erroneous determination, the I.R.S. is stuck with it as a matter of law.” (D.I. 53 at ¶ 9.) To support this proposition, Plaintiff cites Section 405(c)(2)(A) (D.I. 53 at ¶ 9.), which states that:

> The Commissioner of Social Security shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal representative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

42 U.S.C. §405(c)(2)(A).

The Title of Section 405 clearly states, however, that it is to be used as “[e]vidence and procedure for establishment of benefits.” 42 U.S.C. §405. Further, the section Plaintiff relies on to support her argument that the IRS is bound by determinations made by the SSA states that “the Commissioner's records ... shall be conclusive for the purposes of this title [42 USCS §§ 401 et seq.].” 42 U.S.C. §405(c)(4)(A). In short, by its terms, the statute Plaintiff relies on is limited to benefits calculations. It does not address tax liability. Common sense dictates a citizen cannot be relieved of paying taxes on self-employment income simply by failing to file tax returns in a timely manner or to appeal a social security determination. Plaintiff’s position, taken to its logical extreme, would prevent the IRS from collecting self-employment income taxes from any person who did not file their tax returns in compliance with 42 U.S.C. § 405.

Therefore, the plain meaning of 42 U.S.C. § 405, coupled with a common sense

understanding of the tax code, results in a finding that Plaintiff did in fact owe self-employment taxes for the years 1991 and 1992. Consequently, any refunds calculated by Plaintiff were erroneous, and reliance on those refunds in lieu of payments of her taxes was in error.

B. Bankruptcy Order

Plaintiff filed for bankruptcy protection twice, once in 1995 and again in 2001. (D.I. 48 at ¶¶ 6, 16.) In her Motion for Summary Judgment, Plaintiff argues that she discharged her "tax liabilities for 1991 thru 1996, and the IRS violated the law and its own regulations by refusing to refund the money." (D.I. 53 at ¶ 13.) Plaintiff has fundamentally misunderstood the purpose and function of the bankruptcy system. Plaintiff appears to incorrectly believe that the IRS, as a result of the discharge of her tax liability for the years in question, should refund taxes that she owed and paid. It is worth mention that Plaintiff cites no legal authority for this novel proposition.

In her Amended Complaint, Plaintiff also states that "the IRS did not appear or file proof of claim" in her 2001 no-asset Chapter 7 bankruptcy. (D.I. 48 at ¶ 16.) Plaintiff did not address this issue in her Motion for Summary Judgment. (D.I. 53.) In a no-asset Chapter 7 bankruptcy, however, the IRS is not required to file a proof of claim. *See Palmer v. McMahon (In re Palmer)*, 216 B.R. 435, 437 (D. Nev. 1997) (holding that "although the IRS did not file a proof of claim, it did not waive its right to collect outstanding tax liabilities" during a no-asset bankruptcy); *Cf. Judd v. Wolfe (In re Judd)*, 78 F.3d 110, 115 (3d Cir. 1996) (stating that "[i]n a case where there are no assets to distribute ... the right to file a proof of claim is a hollow one"). Therefore, the IRS's failure to file a claim during Plaintiff's no-asset bankruptcy does not prevent it from

collecting taxes that were not discharged during that bankruptcy. The Bankruptcy Court, in an October 14, 2004 order, stated that the taxes discharged in its March 27, 2002 order were for the years 1990 through 1996. (D.I. 53, Ex. C.) Plaintiff admits in her Amended Complaint that any tax liability sought by the IRS originated after 1996. (*See* D.I. 48 at ¶¶ 5, 8 (stating that before applying the refund to the years 1990 through 1996 she had a $174.48 credit, but after recalculating her taxes to account for the refund she arrived at a credit of $6,752.52 to be applied to her 1997 tax return).) Consequently, the taxes in question were not discharged in bankruptcy and Plaintiff is responsible for their payment.

Plaintiff also to argues that "[d]uring and after that bankruptcy proceeding [*i.e.*, the 2001 bankruptcy], the IRS continued dunning me for payment of what became more than $15,000 and it did not release the lien on my home." (D.I. 48 at ¶ 17.) Plaintiff appears to allege that the attempted collection during her bankruptcy was a violation of 11 U.S.C. § 362(a), the automatic stay provision. (*Id*. at ¶ 18.) In the Bankruptcy Court's October 14, 2004 order, however, that court held that the IRS did not violate the December 3, 2001 order by sending Plaintiff a "Reminder Notice." (D.I. 53, Ex. C.) It is unclear if Plaintiff also contends that the IRS, in not releasing the lien on her home, violated the Bankruptcy Court's order. If that is her contention, however, it must fail because I have already determined that the IRS's claim is proper.

V. CONCLUSION

Plaintiff was not due a refund after her 1997 discharge from bankruptcy and her tax liabilities were not discharged in her 2001 bankruptcy. Therefore, the IRS did not violate 26 U.S.C. § 7433, because its collection activities were lawful. Accordingly, it is

hereby ORDERED that Defendant's Motion for Summary Judgment (D.I. 55) is GRANTED and Plaintiff's Motion for Summary Judgment (D.I. 53) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware
February 23, 2005

Title 26 Internal Revenue Code Section 1401 states that “[i]n addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to the following percent ... .” 26 USC § 1401.

“The term "time limitation" means a period of three years, three months, and fifteen days.” *Id*. (c)(1)(B).

In the instant case, Plaintiff did not abide by the rules set forth in that Section 405 of the SSA code, and resultantly, she was denied benefits she would have otherwise received. This does not mean, however, that she should be relieved of her obligation to pay taxes to the IRS\. Section 405 states that

(4) Prior to the expiration of the time limitation following any year the Commissioner of Social Security may, if it is brought to the Commissioner's attention that any entry of wages or self-employment income in the Commissioner's records for such year is erroneous or that any item of wages or self-employment income for such year has been omitted from such records, correct such entry or include such omitted item in the Commissioner's records, as the case may be. After the expiration of the time limitation following any year--

(B) The term "time limitation" means a period of three years, three months, and fifteen days.

4 (A) the Commissioner's records (with changes, if any, made pursuant to paragraph (5)) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this title That title further states that

> the absence of an entry in the Commissioner's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this title [42 USCS §§ 401 et seq.] that no such alleged self-employment income was derived by such individual in such year unless it is shown that he filed a tax return of his self-employment income for such year before the expiration of the time limitation following such year ... .

Id. (c)(4)(C).

Specifically, that statute states that

> the Commissioner's records shall be evidence for the purpose of proceedings before the Commissioner of Social Security or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages

> alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

42 U.S.C. § 405(c)(3).[5]

[5]Plaintiff cites various parts of the Section 405 to support her argument that a finding of self-employment income by the SSA is binding on the IRS, including §405(c)(2)(H), (4)(A). The above quoted Section, however, while not cited by Plaintiff, appears the most relevant.