IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RICHARD SNYDER, AND MARION SNYDER, *pro se,* Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	))))))))))	C.A. No. 04-05 (GMS)

MEMORANDUM

I. INTRODUCTION

On January 5, 2004, plaintiffs Richard and Marion Snyder (collectively "the Snyders"), acting *pro se*, filed a complaint against the United States, alleging a violation of 26 U.S.C. § 7432 (2002). Presently before the court are five motions: (1) the Snyders' motion to amend (D.I. 12); (2) the United States' Motion to Dismiss (D.I. 14); (3) the Snyders' Motion to Amend Complaint (D.I. 17); (4) the Snyders' Motion for Summary Judgment (D.I. 19); and (5) the Snyders' Motion for Default Judgment (D.I. 24). For the following reasons, the court will grant the Snyders' motion(s) to amend, grant the United States' Motion to Dismiss, and deny as moot both the Snyders' Motion for Summary Judgment and the Snyders' Motion for Default Judgment.

II. DISCUSSION

This case arises out of the alleged failure of the IRS to release liens it placed on the Snyders' property. In the complaint, the Snyders allege that the United States Bankruptcy Court in the District of Maryland declared the liens void on May 14, 2001, but the IRS never released them. Consequently, the Snyders brought the present action, *pro se*, on January 5, 2004, pursuant to 26 U.S.C. § 7432, which authorizes damages against the United States in the event that "any officer or

employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien . . . on property of the taxpayer." Subsequently, on May 24, 2004, the Snyders filed a document entitled "Amended Complaint," which the court interprets as a motion to amend. (D.I. 12.) The amended complaint seems to add an additional count, in which the Snyders seek to name the United States as a defendant, pursuant to 28 U.S.C. § 2410 (1994), in an action to quiet title to the property. To date, this motion to amend has not been ruled upon.

The United States moved to dismiss the original complaint on the ground that it was not filed within the two-year statute of limitations provided by § 7432(d)(3), which reads, "[n]otwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues." As the United States points out, according to 26 C.F.R. § 301.7432-1(i)(2), "[a] cause of action accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action." *See also Milby v. United States*, 172 F. Supp. 2d 606, 609-10 (W.D. Pa. Mar. 16, 2001). Here, the Unites States argues, the Snyders' cause of action accrued when the bankruptcy court voided the liens on May 14, 2001. The court agrees. As soon as the bankruptcy judge ruled in the Snyders' favor, they had "all of the essential elements of a possible cause of action." Therefore, taking the allegations of the complaint as true, the Snyders had until May 14, 2003.

In response, the Snyders do not seem to dispute the May 2001 date. Rather, they assert several other grounds of denying the United States' motion: (1) the statute of limitations is tolled by the Snyders' bankruptcy; (2) estoppel; (3) the statute of limitations is tolled by the IRS' decision to appeal the bankruptcy court's ruling, a fact which was unknown to the Snyders at the time they

originally filed their complaint; (4) egregious procedural errors committed by the IRS have led to its unjust enrichment; (5) the IRS "demanded extensions to the assessment period, denying refunds of prior taxes and a large cash bond posted (15) years ago" (D.I. 16 ¶ 6); (6) "[t]here existed a quasi-contract in that the six year statute in 28 U.S.C. 2815(a) applies" (D.I. 16 ¶ 7);[1] and (7) equitable tolling.

As to grounds (1) through (3) listed above, the Snyders do no more than summarily state each ground as a sufficient reason for denying the motion to dismiss. Due to the lack of further explanation, the court does not understand the Snyders' rationale, and therefore, the court does not see fit to deny the United States' motion based on any of these three grounds.

As to grounds (4) through (6), the Snyders appear to be likening their situation to the facts in *United States v. Domino Sugar Corp.*, 349 F.3d 84 (2d Cir. 2003). In that case, the defendant had overpaid a deposit on its future tax liability. The IRS later refunded the entire overpaid amount with interest, but for technical reasons it should not have included interest in the refund. After more than two years had elapsed (but fewer than six), the United States finally brought suit to recover the erroneously paid interest. Although 26 U.S.C. § 6532(b) provides the United States with a two-year statute of limitations for the recovery of erroneous refunds, section 2415(a) of Title 28 provides the United States with a six-year statute of limitations to file actions founded upon express or implied contracts. The district court held that the six-year limitations period should control because "the claim was one for unjust enrichment grounded in quasi-contract," and found in favor of the United States. *Domino Sugar*, 349 F.3d at 86. It is upon this language that the Snyders presumably rely.

[1]The Snyders' briefs refer to 28 U.S.C. § 2815(a), which is nonexistent. The court assumes that they intend to refer to § 2415(a).

Although the Second Circuit also found in favor of the United States, its rationale was different than that of the district court. The panel first explained that actions brought by the United States are typically not subject to statutes of limitations. *Id.* at 88. The court then held, for reasons that are unimportant here, that the action in question was not governed by the two-year statute of limitations. *Id.* at 90. Therefore, because the action was filed before six years had elapsed, the court found it unnecessary to decide whether the case was governed either by the six-year statute of limitations period, or by none at all. *Id.* Importantly, the court did not comment either way on the district court's rationale. Thus, *Domino Sugar* is inapposite to this case. But even assuming for the sake of argument that the district court's holding was an accurate statement of the law, and further assuming that its holding would somehow apply in this case, the six-year statute of limitations the Snyders seek to apply is only relevant to "action[s] for money damages *brought by the United States*," 28 U.S.C. § 2415(a) (1994) (emphasis added). Section 2415(a) does not apply to actions brought by private citizens such as the Snyders, and therefore, it could not possibly be the relevant statute of limitations in this case.

As to ground (7), the Snyders point to *Young v. United States*, 535 U.S. 43 (2002), in which the Supreme Court applied the principles of equitable tolling to allow the IRS to collect past tax liabilities from taxpayers who took advantage of a time-limitation loophole in bankruptcy law that rendered their past tax liabilities discharged. Because the facts of *Young* bear no resemblance to the facts of this case, it is inapposite. In general, however, equitable tolling in cases where Congress has created a limited waiver of sovereign immunity (as appears to be the case with § 7432) is "not to be lightly implied." *Becton Dickinson & Co. v. Wolckenhauer*, 215 F.3d 340, 346 (3d Cir. 2000). Moreover, assuming *arguendo* that equitable tolling is permissible for suits brought against the

United States pursuant to § 7432, the Snyders are required to show (1) they were actively misled by the IRS, (2) they have "in some extraordinary way" been prevented from asserting their rights, or (3) they timely asserted their rights mistakenly in the wrong forum. *United States v. Midgley*, 142 F.3d 174, 179 (3d Cir. 1998).

Toward this end, the Snyders allege the following:

> (4) Since [the Snyders'] on-time filing of their income tax returns for the year 1988, plaintiffs have been harrassed [sic] and intimidated by the IRS continually. Over the past (15) years that agency has improperly liened [sic] and levied on plaintiffs['] property. Its' [sic] representatives have lied and misrepresented facts in both the United States Bankruptcy Court and the United States District Court. This egregious behavior includes both categories of "defective pleadings" and "trickery misconduct" (*Young id*). It certainly allows for equitable tolling, if in fact it were needed.
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> (5) In the year 2001, IRS counsel, Gregory Hrebiniak obtained a default judgment against plaintiffs in the United States District Court (Maryland). The sole allegation put forth and was accepted by the judge, was a bald lie. Counsel falsified the date of a secret removal of the only penalty assessed against the taxpayers *by eight years!*
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> (6) This person told the judge, in person and in pleadings, that taxpayers had filed their 1988 taxes (13) months late...and that the penalty for doing so (some $50,000 including interest) was removed on 4 February 1991. (It was removed in February 1999)[.]
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> (7) He also made the identical allegations in (2) hearings in the bankruptcy court on 13 March 2001 and 14 May 2001. He lied as to that date of the receipt of the tax returns. Both allegations were disproved by testimony evidence. The proof of claim filed in debtors' bankruptcy was acknowledged to be inaccurate by the amount of the above penalty. It was also found to contain thousands of dollars of other improper charges.
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> (8) The same bankruptcy hearings further determined that the IRS in assessing taxpayers in 1991 *failed to follow its' own procedures*. The judge voided the IRS liens.
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> (9) It was also determined in the bankruptcy hearings that taxpayers had filed no fewer than *six* proper tax returns for 1988. Mainly to replace those documents that had been lost by IRS. This, after ten years of attempting to prove *this* misconduct.

(D.I. 26 ¶¶ 4-9 (emphasis in original).)

These allegations, even if true, do not demonstrate that the Snyders' failure to bring suit within two years was caused (1) by misconduct by the IRS, (2) by some other extraordinary interference with their ability to assert their rights, or (3) by a mistaken (but timely) filing in a different forum. Therefore, the court rejects the Snyders' equitable tolling argument as well. As a result, the court must grant the United States' motion to dismiss.

However, dismissing the § 7432 claim does not dispose of the case in its entirety. As mentioned above, the Snyders filed a motion to amend on May 24, 2004, which is still pending. (D.I. 12.) The Snyders also filed a second motion to amend on June 14, 2004, which purports to bring its previous motion to amend into compliance with local rule 15.1. (D.I. 17.) Because the second motion does not appear to be anything more than an expanded version of the first motion, the court will treat both motions as one. Although it is not entirely clear,[2] the United States seems to oppose the Snyders' motion(s) to amend by arguing that the action to quiet title is premature, given that the bankruptcy court's ruling voiding the liens is on appeal. (D.I. 22 at 3.) It is ironic that the United States argues on the one hand that the Snyders should have brought their § 7432 claim earlier, but on the other hand that the Snyders should not be permitted to bring an action to quiet title this soon. The court will not allow the United States to argue both sides of the same coin. If this court's disposition of the Snyders' action to quiet title will be problematic, the United States can certainly move to stay pending the outcome of the other ongoing proceedings. Therefore, the court

[2]It is not entirely clear that the United States opposes the motion(s) to amend because the argument under consideration here was made by the United States in opposing the Snyders' motion for summary judgment.

will permit the Snyders to amend as requested.[3]

As to the Snyders' motions for summary judgment and default, they were filed before the court's just-announced decision to grant the Snyders' motion to amend. As such, they were filed in only reference to the § 7432 count in the original complaint. Thus, the court's decision to grant the United States' motion to dismiss the § 7432 count requires that both motions be denied as moot.[4]

III. CONCLUSION

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[3]The United States makes a rather confusing assertion when it says, "[t]he amended complaint was improperly served on the United States; the Attorney General was not served with a copy of the complaint." The court assumes "the complaint" mentioned in the latter clause refers to the amended complaint because the record reflects that the Attorney General was properly served with the original complaint. (D.I. 4.) Thus, the court finds no failure by the Snyders in that regard. Moreover, contrary to the United States' assertion, the Attorney General need not be served with the amended complaint. Service of "every pleading subsequent to the original complaint" is controlled by Fed. R. Civ. P. 5, not Rule 4. Accordingly, "service under [Rule 5(a)] on a party represented by an attorney is made *on the attorney* unless the court orders service on the party." Fed. R. Civ. P. 5(b) (emphasis added). Therefore, since no court order to the contrary has been made in this case, service on the United States Attorney in this district satisfies the rule. *See Jones v. Watts*, 142 F.2d 575, 577 (5th Cir. 1944). Indeed, it appears that every filing related in substance to the Snyders' motion(s) to amend contains a certification that it was in fact served on the United States Attorney for the District of Delaware. (See D.I. 12; D.I. 13; D.I. 17; D.I. 18.)

[4]The Snyders also filed a document entitled "Pleading with respect to 28 U.S.C. 2410," in which they state:

> (7) Plaintiffs therefore state that they have presented a *prima facie* case and that a motion for summary judgment herein should be signed. Plaintiffs ask that the liens be striken [sic] forthwith, and that the tax be declared to be reclassified as a general claim. And that the classification as priority be declared invalid.
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> (8) This relief is in addition to that requested in the original complaint.

(D.I. 13 ¶¶ 7-8.)

To the extent that this motion to amend also serves as a motion for summary judgment, the court will similarly deny it as moot.

For the foregoing reasons, the court will grant the United States' Motion to Dismiss as to the § 7432 count (D.I. 14), grant the Snyders' motion(s) to amend (D.I. 12; D.I. 17), and deny the Snyders' Motion for Summary Judgment (D.I. 19) and Motion for Default (D.I. 24) as moot. The court will also deny as moot any other motion for summary judgment implicit in the Snyders' filings. (D.I. 13.)

Dated: April 8, 2005

/s/ Gregory M. Sleet
UNITED STATES DISTRICT COURT

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ORDER

IT IS HEREBY ORDERED THAT:

1. The United States' Motion to Dismiss (D.I. 14) be GRANTED as to the § 7432 count;

2. The Snyders' motion(s) to amend (D.I. 12; D.I. 17) be GRANTED;

3. The Snyders' motion(s) for summary judgment (D.I. 13; D.I. 19) be DENIED as moot; and

4. The Snyders' Motion for Default (D.I. 24) be DENIED as moot.

Dated: April 8, 2005

/s/ Gregory M. Sleet
UNITED STATES DISTRICT JUDGE