

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
AHMED HUSSEIN,

Plaintiff,

-against-

UNITED STATES OF AMERICA,
COMMISSIONER OF INTERNAL REVENUE,
and REVENUE OFFICER PHILLIP
GRANITE,

Defendants.
-----X

JOHN F. KEENAN, United States District Judge:

Before the Court is the motion of plaintiff, Ahmed Hussein, seeking a preliminary injunction to enjoin defendants from encumbering or collecting any of plaintiff's property pending resolution of this suit. Hussein, a stock broker at Dean, Witter, Reynolds, Inc., owes \$707,122.22 in taxes and interest arising from the tax year of 1983 and \$20,026.00 in taxes and interest from the tax year of 1984. Defendants seek to collect these taxes by placing liens on Hussein's bank accounts, as well as his accounts at Dean Witter, which he claims will ultimately result in his loss of employment. Defendants have already notified Dean Witter of their intent to levy upon Hussein's salary.

Defendants argue that the Anti-Injunction Act, see 26 U.S.C. § 7421, prohibits persons from bringing suits "for the purpose of restraining the assessment or collection of any tax [to] be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). This Act embodies Congress's long-standing

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94 Civ. 0605 (JFK)
MEMORANDUM OPINION
AND ORDER

FILED OPINION
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policy against premature interference with the orderly administrative process by which taxes are determined, assessed and collected. Given that "taxes are the life-blood of government," Bull v. United States, 295 U.S. 247, 259 (1935), it is necessary for the administrative collection process to proceed "without judicial intervention, and . . . legal right to disputed sums [is to] be determined in a suit for refund." Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7 (1962).

Plaintiff may only receive an exception from the Act if he can show that (1) under no circumstances can the government prevail and (2) he has no other remedy at law. See id. at 7.

Hussein contends that the government cannot prevail because the statute of limitations on the portion of this action concerning the 1983 taxes has already run.¹ Prior to November 5, 1990, the statute of limitations on collection of any tax was six years after the assessment of the tax, unless the IRS and the taxpayer otherwise agreed in writing to extend the period. See 26 U.S.C. § 6502(a). On November 5, 1990, Congress extended the statute of limitations on the collection of taxes from six years to ten years. The Act applies a new ten-year period to taxes assessed after November 5, 1990 and to taxes assessed before that date, if the period for collection had not yet expired as of November 5, 1990. See Act of 1990, 1990 U.S.C.C.A.N. (104 Stat.) 1388-458, Pub. L. No. 101-508 § 11317.

¹ Plaintiff apparently concedes that defendants' collection of his 1984 taxes are within the statute of limitations period. See Plaintiff's Memorandum of Law at 2.

In the present case, Hussein's 1983 taxes were assessed on May 28, 1984. On May 6, 1985, Hussein submitted an "Offer in Compromise," which the IRS rejected on September 4, 1986. The effect of Hussein's Offer in Compromise was to toll the running of the statute of limitation for the period during which the offer was pending (one year, three months and 29 days) and for one year thereafter. Thus, had Hussein not submitted an offer, the statute of limitations would have expired on May 28, 1990; instead, however, the offer tolled the six-year statute of limitations until September 27, 1992. Because Congress's amendment to the limitations period occurred prior to September 27, 1992, the new ten-year period applies to Hussein's case and the government is entitled to collect from plaintiff until September 27, 1996.

Hussein asserts that his Offer of Compromise was a collateral written agreement between him and the government to extend the limitations period to a date certain, without regard to 26 U.S.C § 6502(a). The Offer in Compromise states in relevant part:

The taxpayer-proponents agree to the waiver and suspension of any statutory periods of limitations for assessment and collection of the tax liability described in paragraph (1) while the offer is pending, during the time any amount offered remains unpaid and for one (1) year after the satisfaction of the terms of the offer.

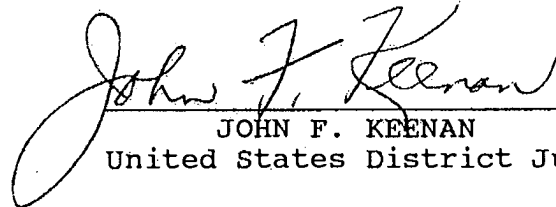
IRS Offer to Compromise ¶ 8 (attached to Defendants' Memorandum of Law). This waiver is not a contract to set a date certain for the expiration of the limitations period because waivers are not

considered contracts. See Stanger v. United States, 282 U.S. 270, 276 (1931). In addition, even if contract principles were applied, plaintiff's assertion would still fail because the language in the Offer of Compromise clearly suggests that the applicable statutory limitations period was merely tolled and not disregarded.

The Court finds no merit in plaintiff's claim that he did not receive timely notice of the IRS's intention to levy. Therefore, plaintiff's application for a preliminary injunction is denied. Concerning defendants' motion to dismiss, plaintiff is directed to submit his opposition to the motion by February 16, 1994. Defendants' reply papers will be due on February 23, 1994.

SO ORDERED.

Dated: New York, New York
February 10, 1994



JOHN F. KEENAN
United States District Judge