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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

4	In re:)	Case No. 08-30673-B-13
5	RAYMOND MORENO,)	Adversary No. 14-2314
6)	DC No. USA-1
7	Debtor(s).)	
8	RAYMOND MORENO,)	
9)	
10	Plaintiff(s),)	
11	v.)	
12	UNITED STATES OF AMERICA,)	
13	INTERNAL REVENUE SERVICE,)	
14	Defendant(s).)	

FILED

MAR - 9 2015

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

ORDER DISMISSING AMENDED COMPLAINT WITHOUT PREJUDICE

Before the court is a *Motion to Dismiss or in the Alternative for Summary Judgment and a Declaration of Trial Attorney*, with attached exhibits, filed by Defendant United States of America on behalf of the Internal Revenue Service, an *Opposition of Plaintiff/Debtor to Defendant's Motion to Dismiss or in the Alternative for Summary Judgment* filed by Debtor/Plaintiff Raymond Moreno, and a *Reply Brief in Support of Motion to Dismiss or in the Alternative for Summary Judgment* filed by the United States. This matter was heard on February 11, 2015. Proper notice was given. Appearances of counsel were noted on the record.

The United States seeks dismissal of, or alternatively summary judgment on, the claims alleged in Moreno's *Amended*

1 *Complaint to Determine Whether Internal Revenue Service Has*
2 *Violated Debtor's Discharge Pursuant to 11 U.S.C. § 1328 and*
3 *Request for Attorney's Fees and Costs.* The Amended Complaint
4 alleges the IRS violated the discharge injunction of 11 U.S.C.
5 § 524 by attempting to collect tax liabilities discharged under
6 11 U.S.C. § 1328(a). Specifically, Moreno alleges the IRS
7 violated the discharge he received under 11 U.S.C. § 1328(a) and
8 the discharge injunction of 11 U.S.C. § 524 when it sent him a
9 notice of levy, retained and applied his 2013 tax return to
10 satisfy tax liabilities, required him to set up an account to pay
11 additional taxes, and generally pursued collection of discharged
12 tax liabilities all after he completed payments under the terms
13 of his confirmed Chapter 13 plan and received a discharge under
14 § 1328(a). Moreno seeks declaratory relief (but not under 11
15 U.S.C. § 505) and damages from the United States for the IRS's
16 alleged violations. However, because the Amended Complaint fails
17 to demonstrate that Moreno exhausted his administrative remedies
18 before he commenced this action and because the court cannot
19 grant declaratory relief based on the present posture of this
20 case, the United States' motion to dismiss will be granted, and
21 the Amended Complaint will be dismissed without prejudice. The
22 United States' motion for summary judgment will be denied as
23 moot.

24 Section 524(a)(2) of the Bankruptcy Code operates as an
25 injunction to enjoin creditors from collecting pre-petition debts
26 following entry of a discharge under 11 U.S.C. § 1328(a). A
27 creditor who knowingly violates the discharge injunction under
28 11 U.S.C. § 524(a)(2) can be held in contempt and liable for

1 damages under 11 U.S.C. § 105(a). *Zilog, Inc. v. Corning (In re*
2 *Zilog)*, 450 F.3d 996, 1007 (9th Cir. 2006). However, when the
3 creditor is the IRS, an action for violation of the discharge
4 injunction lies not in civil contempt but, rather, exclusively
5 under the Internal Revenue Code.

6 The exclusive remedy for recovering damages from the IRS for
7 a violation of the discharge injunction is a petition under 26
8 U.S.C. § 7433(e). Such a petition is subject to the damages
9 limitation in 26 U.S.C. § 7433(b) and the exhaustion requirement
10 in 26 U.S.C. § 7433(d)(1). Section 7433(b) (the damages
11 provision) explicitly applies to petitions under 26 U.S.C.
12 § 7433(e), and 26 U.S.C. § 7433(d)(1) (the exhaustion provision)
13 applies to all awards under subsection (b). Therefore, a
14 petition brought under 26 U.S.C. § 7433(e) is subject to the
15 provisions of 26 U.S.C. § 7433(b) (damages limitation) and 26
16 U.S.C. § 7433(d)(1) (exhaustion of administrative remedies
17 provision). *Kovacs v. United States*, 614 F.3d 666, 673 (7th Cir.
18 2010); *Kuhl v. United States*, 467 F.3d 145, 147 (2d Cir. 2006);
19 *In re Pitts*, 497 B.R. 73 (Bankr. C.D. Cal. 2013), aff'd, 515 B.R.
20 317 (C.D. Cal. 2014); *Kight v. IRS (In re Kight)*, 460 B.R. 555,
21 565 (Bankr. M.D. Fla. 2011); *In re McDonald*, 2013 WL 5437344 (D.
22 Nev. 2013); *In re Parham*, 2013 WL 3933938 (Bankr. E.D. Tenn.
23 2013).

24 Treasury regulations establish the administrative remedies
25 that must be exhausted. See 26 C.F.R. § 301.7433-2. A debtor
26 must send a written administrative claim for damages to the
27 Chief, Local Insolvency Unit, for the judicial district in which
28 the debtor filed the underlying bankruptcy case. 26 C.F.R.

1 § 301.7433-2(e)(1). The administrative claim must include the
2 dollar amount of the claim, a description of the injuries
3 allegedly suffered by the taxpayer, the name, current address,
4 current home and work telephone numbers of the taxpayer, and the
5 location of the bankruptcy court in which the underlying
6 bankruptcy case was filed. *Id.* at § 301.7433-2(e)(2)(i)-(v).
7 With one exception not applicable to this case, no action is to
8 be maintained in the bankruptcy court for violation of 11 U.S.C.
9 § 524 before either a decision is rendered on the administrative
10 claim or six months have passed since the administrative claim
11 was filed. 26 C.F.R. § 301.7433-2(d).

12 The Amended Complaint and Moreno's opposition to the United
13 States' motion fail to establish that Moreno exhausted
14 administrative remedies. Both state that Moreno's contact with
15 the IRS was limited to his attorney's telephone calls to the
16 agency and his attorney's telephone conversations with an IRS
17 revenue agent. Those verbal communications and discussions do
18 not satisfy the exhaustion requirement of 26 U.S.C. § 7433(d)(1)
19 because they do not comply with the administrative process in the
20 aforementioned Treasury regulations.

21 Moreno offers two arguments why the exhaustion requirement
22 should not apply: (1) the IRS submitted a proof of claim in his
23 Chapter 13 case and thereby consented to the court's jurisdiction
24 over his discharge violation claim; and (2) the court has
25 jurisdiction over the IRS and the discharge violation claims
26 under 11 U.S.C. § 106. Neither argument is persuasive.

27 First, the Ninth Circuit has held that a federal court
28 cannot exercise jurisdiction over a claim against the IRS brought

1 under 26 U.S.C. § 7433 unless administrative remedies are first
2 exhausted. *Conforte v. United States*, 979 F.2d 1375, 1377 (9th
3 Cir. 1993); see also *U.S. v. Hooper*, 2005 WL 5305258 (E.D. Cal.
4 2005) ("Nevertheless, a prerequisite to filing [an action for
5 damages against the IRS] is exhaustion of all administrative
6 remedies within the IRS. 26 U.S.C. § 7433(d)(1)."). Moreno
7 cites no authority - and the court has found none - that would
8 permit this court to deviate from *Conforte*.

9 Second, even if 11 U.S.C. §§ 106(a)(1) and (2) provide the
10 court with authority to hear and determine claims against the IRS
11 for alleged violations of the discharge injunction, 11 U.S.C.
12 § 106(a)(4) requires the court to do so consistent with
13 appropriate nonbankruptcy law applicable to the relevant
14 government agency. The relevant government agency here is the
15 IRS and the appropriate nonbankruptcy law is 26 U.S.C. § 7433
16 which, as discussed above, requires exhaustion. See e.g., *In re*
17 *Pointer*, 510 B.R. 433, 438 n.2 (Bankr. M.D. Ga. 2014).

18 In short, Moreno failed to exhaust administrative remedies
19 before he filed this adversary proceeding, and his claims under
20 26 U.S.C. § 7433 must be dismissed without prejudice. The court
21 will also dismiss Moreno's claim for declaratory relief without
22 prejudice because the Declaratory Judgment Act, 28 U.S.C. §
23 2201(a), bars "federal courts from giving declaratory judgments
24 in tax matters." *Handeland v. Comm'r of Internal Revenue*, 519
25 F.2d 327, 329 (9th Cir. 1975); *Mitchell v. Riddell*, 402 F.2d 842,
26 846 (9th Cir. 1968), cert. denied, 394 U.S. 456 (1969) ("This
27 Court, and other Circuit Courts, unanimously hold that under the
28 specific terms of § 2201 the courts have no jurisdiction to enter

1 declaratory judgments with respect to Federal taxes.").

2 Therefore, in accordance with the above,

3 IT IS ORDERED that the United States' motion is GRANTED IN
4 PART and DENIED IN PART.

5 IT IS FURTHER ORDERED that the motion to dismiss filed by
6 the United States on behalf of the IRS is GRANTED and the Amended
7 Complaint is DISMISSED in its entirety without prejudice.

8 IT IS FURTHER ORDERED that the motion for summary judgment
9 filed by the United States on behalf of the IRS is DENIED as
10 moot.

11 Dated: March 9, 2015.

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15 UNITED STATES BANKRUPTCY JUDGE
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INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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