

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **CV 09-09449 RGK (FFMx)** Date **March 8, 2010**

Title **JOSEPH R. FRANCIS v. UNITED STATES OF AMERICA**

Present: The Honorable **R. GARY KLAUSNER, U.S. DISTRICT JUDGE**

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) Order Re Motion for Reconsideration (DE 46)

On January 13, 2010, the Court issued an Order Re Complaint ("Order"). In the Order, the Court found that (1) Defendant's jeopardy assessment and levy of accounts was reasonable under the circumstances, and (2) the amount of the assessment was appropriate under the circumstances. Therefore, the Court denied Plaintiff's Complaint for Abatement of Jeopardy Assessments, Release of Levy on Rothwell Limited Account, or Alternatively, Reduction and Return of Excessive Amounts Levied.

Currently before the Court is Plaintiff's Motion for Reconsideration. Plaintiff's motion is based on the following grounds: (1) the Court has failed to consider material facts and law, based on a misunderstanding of the Plea Agreement and settled tax law; (2) Defendant misrepresented the evidence regarding the Rothwell account to the Court; and (3) Plaintiff has discovered materially different facts he could not have earlier presented to the Court that demonstrate Defendant's misrepresentation.

Under Federal Rule of Civil Procedure 60(b) a party may bring a motion for relief from a judgment due to mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b). Absent unusual circumstances, reconsideration is only appropriate where the court is presented with newly discovered evidence, the court committed clear error or the decision was manifestly unjust, or there has been an intervening change in controlling law. *Beentjes v. Placer County Air Pollution Control Dist.*, 254 F. Supp. 2d 1159, 1161 (E.D. Cal. 2003) (citing *School Dist. No. 1J, Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)). A motion for reconsideration should not be used to reargue the motion or present evidence which should have been presented previously. *Beentjes*, 254 F. Supp. 2d at 1161.

Additionally, Local Rule 7-18 states that a motion for reconsideration may only be made on the ground of :

(a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

C.D. Cal. L.R. 7-18.

Regarding the first ground for reconsideration, the Court finds Plaintiff's argument unavailing. First, the underlying argument set forth by Plaintiff is not new. It was clear from Plaintiff's original briefing, as it is in his current briefing, that based on the form of the organizational structure, Plaintiff is not the direct, legal owner of Rothwell. However, this fact was already considered by the Court when it found that the assessment was reasonable and the amount assessed appropriate.

As to the new facts and arguments related to the Rothwell account, the Court has considered such evidence and finds them unconvincing for purposes of changing the Court's original ruling. Even if there was no attempt to liquidate the Rothwell account for purposes of moving the funds out of the United States, all the other evidence, in the aggregate, still warrant the same finding.

In light of the foregoing, the Court **denies** Plaintiff's Motion for Reconsideration.

IT IS SO ORDERED.

Initials of Preparer

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slw
