UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **SACV 10-1021 DOC (MLGx)** Date: November 5, 2010

Title: **SIVATHARAN NATKUNANATHAN** v. **COMMISSIONER OF INTERNAL REVENUE**

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Kathy Peterson	Not Present
Courtroom Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
NONE PRESENT	NONE PRESENT

PROCEEDING (IN CHAMBERS): Order Granting Motion to Dismiss with Leave to Amend

Before the Court is Defendant United States of America ("Defendant")'s Motion to Dismiss for Lack of Subject Matter Jurisdiction; Motion to Dismiss for Failure to State a Claim; and, alternatively, Motion for a More Definite Statement. After reviewing the moving and opposing papers, the Court GRANTS the Motion to Dismiss WITH LEAVE TO AMEND.

I. Background

Plaintiff Sivatharan Natkunanathan ("Plaintiff") filed a Claim for Credit or Refund of Tax ("Complaint") on July 6, 2010 for "tax years 1991 to present." Complaint ¶ 1. Plaintiff alleges that he filed an amended return for the 2000 tax year for which the IRS disallowed a refund of $4,939.00 and an amended return for 2001 in which the IRS disallowed a refund of $22,491.00. Complaint ¶¶ 3, 4, and 7. He further alleges that he filed amended returns for each year from 1991 through the present, excluding 2001, based upon net operating loss carrybacks and carryforwards generated by the 2001 refund claim. ¶ 14. Plaintiff alleges that the IRS issued disallowance letters for each year from 1991 through 2001, but does not allege that such letters were issues for his amended returns for the 2002 through the present years. Complaint ¶ 16.

Plaintiff's complaint explains that his refund claims in 2000 and 2001 were based on "business bad debt deductions" and that the bases of the years 1991 to 2000 arise from the 2001 refund claim relating back to "deductions of business bad debts encompassing product liability . . .."

Complaint ¶ 23. Though Plaintiff included no amended returns or original returns and claimed in his Reply that the Defendant possesses those, Defendant included in its Motion its records of the dates on which Plaintiff's original returns were filed. *See* Motion, 3.

On October 12, 2006, Plaintiff filed a 1040 Form for his refund claim for 2001. Decl. Ex. 1. Plaintiff stated in his Explanation of Changes to Income, Deductions, and Credits that "Did not include self-employment research & development & consulting expenses on his original tax return." *Id.* at 2. On the amended return, Plaintiff claimed "car and truck expenses"of $1001 and "other expenses" of $112,756, but failed to claim any gross profits or gross income. *Id.* at 6. On November 3, 2006, the Internal Revenue Service ("IRS") issued Plaintiff a notice of disallowance of his 2001 refund claim, and advised him that he could appeal the decision with a United States District Court within two years of the date of the letter.

Over a year later, on February 21, 2008, Plaintiff submitted for reconsideration an amended version of his October 2006 refund claim, in which he added the statement that "Taxpayer is deducting bad debts.(Title 26 § 166(d) from his trade or business, under the seven year period of limitation. (Title 26 § 6511(d))." Decl. Ex 2, at 2. He included $111,800 for "bad debts from sales or services," $1001 for "car and truck expense" and $956 for "other expenses." Decl. Ex 2, at 6. The IRS issued another disallowance letter to Plaintiff on August 6, 2008.

In his trial brief for his 2003 year claim's petition to a U.S. Tax Court, Plaintiff argued that his claimed loss in 2003 was based on software design and development losses, which he alleged should be deducted as "research and development expenditures" or "bad debt." Decl. Ex. 3, at 17. The Tax Court disagreed, finding that Plaintiff's claimed losses were not bad debt deductions. *See Nakunanathan v. Commissioner*, T.C. Memo. 2010-15. Plaintiff appealed on July 9, 2010.

In the present Complaint, Plaintiff requests that the Court grant the 2000, 2001, 1991 to 2000, and 2002 to the present claims for "refund or credit." Complaint, ¶¶ 1, 2, 3.

II. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a plaintiff's allegations fail to state a claim upon which relief can be granted. Dismissal for failure to state a claim does not require the appearance, beyond a doubt, that the plaintiff can prove "no set of facts" in support of its claim that would entitle it to relief. *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1968 (2007) (abrogating *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99 (1957)). In order for a complaint to survive a 12(b)(6) motion, it must state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009). A claim for relief is facially plausible when the plaintiff pleads enough facts, taken as true, to allow a court to draw a reasonable inference that the defendant is liable for the alleged conduct. *Id.* at 1949. If the facts only allow a court to draw a reasonable inference that the defendant is possible liable, then the complaint must be dismissed. *Id.*

Mere legal conclusions are not to be accepted as true and do not establish a plausible claim for relief. *Id.* at 1950. Determining whether a complaint states a plausible claim for relief will be a context-specific task requiring the court to draw on its judicial experience and common sense. *Id.*

In evaluating a 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal was proper without converting the motion to one for summary judgment. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Further, a court may consider documents "on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). "The Court may treat such a document as 'part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id.*

Dismissal without leave to amend is appropriate only when the Court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003) (citing *Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996)); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

Federal Rule of Civil Procedure 12(e) allows a party to move for a more definite statement when the complaint "is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." Fed. R. Civ. P. 12(e). "A motion for [a] more definite statement pursuant to Rule 12(e) attacks the unintelligibility of the complaint, not simply the mere lack of detail, and therefore, a court will deny the motion where the complaint is specific enough to apprise the defendant of the substance of the claim being asserted." *Beery v. Hitachi Home Elecs. (Am.), Inc.*, 157 F.R.D. 477, 480 (C.D. Cal. 1993). "If the detail sought by a motion for more definite statement is obtainable through discovery, the motion should be denied." *Id.*; *see also Famolare, Inc. v. Edison Bros. Stores, Inc.*, 525 F. Supp. 940, 949 (E.D. Cal. 1981).

"Motions for a more definite statement are viewed with disfavor, and are rarely granted." *Cellars v. Pacific Coast Packaging, Inc.*, 189 F.R.D. 575, 578 (N.D. Cal. 1999). Under the liberal federal pleading standards, all that is required of a complaint is "a short and plain statement of the claim" that gives the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests." Fed. R. Civ. P. 8(a); *Conley v. Gibson*, 355 U.S. 41, 47, 78 S. Ct. 99, 103 (1957). Therefore, a Rule 12(e) motion may not be used to compel the plaintiff to set forth "the statutory or constitutional basis for his claim, only the facts underlying it." *McCalden v. Cal. Library Ass'n*, 955 F.2d 1214, 1223 (9th Cir. 1990). However, "even though a complaint is not defective for failure to designate the statute or other provision of law violated, the judge may in his discretion . . . require such detail as may be appropriate in the particular case." *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir.

1996).

III. Discussion

A. Statute of Limitations

Complaints seeking refunds for overpayment of taxes are governed by 26 U.S.C. § 6511(a), which states that: "Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within *3 years from the time the return was filed* or *2 years from the time the tax was paid*, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid." 26 U.S.C. § 6511(a).

A seven-year statute of limitations applies in lieu of the three year period if it relates to a "bad debt" as described in 26 U.S.C. § 6511(d)(1)(A) or if the claim for a refund is based on net operating loss ("NOL") carryovers originating from the bad debt year under 26 U.S.C. § 6511(d)(1)(B).

Under 26 U.S.C. § 6532(a)**,** taxpayers cannot file suit for recovering any taxes "before the expiration of six months from the date of filing the claim required under such section . . . nor after the expiration of two years from the date of mailing . . . of a notice of the disallowance . . . ." 26 U.S.C. § 6532(a)(1).

Based on the allegations set forward in the Complaint, it appears that Plaintiff is barred by the statutes of limitations. Plaintiff's complaint alleges that the 1991 through 2005 amended returns were filed outside of the two or three years periods. Plaintiff brought his claim for a refund of the 2001 year more than two years after the IRS issued its disallowance. Therefore, Plaintiff's carryback NOL claims for refunds from the years 1991 to 1999 and his carryforward claims for the years 2002 to 2005 are barred, given their reliance on a timely filing of the claim for 2001.

Furthermore**,** the refund claims for 2000 and 2001 were filed more than three years after the filings dates of the original return. Plaintiff argues that he has an independent "bad debt" deduction for year 2000 under 26 U.S.C. § 6511 (d)(1)(A), but he has failed to allege the necessary facts explaining how it qualifies as a bad debt. He provided no facts upon which the Court can determine whether or not that deduction--or the ones relying on the carryback year of 2001-- are properly classified as bad debts. Under 26 U.S.C. 6511(d), the claims for years 1991 through 2000, which are based on NOL carrybacks, and the carryforward claims from the years 2002 through 2005 are not timely given their reliance on the 2001 refund claim.

As for the claims from 2002 through the present (which the Court assumes means through

2009, because Plaintiff could not have possibly have filed for 2010, as the year is not yet complete), Plaintiff failed to allege that he filed proper refund claims for those years.

The claim for the year 2009 faces a different problem: it was filed before the six-month time period required under 26 U.S.C. § 6532(a). According to the Complaint, the 2009 return was filed on April 15, 2010, but Plaintiff's complaint was filed roughly three months later, in July of 2010. Complaint, ¶ 16. The Court therefore has no valid claim to consider for the 2009 year.

B. Jurisdiction over Tax Court Proceedings

Plaintiff's initiation of proceeding in Tax Court for the 2003 claim also precludes this Court's jurisdiction over the claim for that year. *See* U.S.C. 7422(e) (establishing that "[i]f the taxpayer files a petition with the Tax Court, the district court . . . shall lose jurisdiction of the taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court . . ."). Plaintiff cannot litigate in both the Tax Court and in this Court over his 2003 claim.

C. Failure to State a Claim

Because the 2001 claim was filed late, Plaintiff appears to be barred from his carryback and carryforward losses that are based on that claim, and therefore has failed to state a claim as to years 1991 through 1999 and 2002 to the present. Furthermore, as stated above, because Plaintiff has not sufficiently explained how the 2000 and 2001 claims result from bad debt losses, he has failed to state a claim as to all years.

IV. Disposition

Based on the foregoing, Defendant's Motion to Dismiss is GRANTED WITH LEAVE TO AMEND on or before November 22, 2010.

The Clerk shall serve this minute order on all parties to the action.