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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Christopher Peter Campion,  
Plaintiff,  
vs.  
Timothy A. Towns, Agent for the Internal  
Revenue Service,  
Defendant.

No. CV-04-1516 PHX ROS  
**ORDER**

Pending is Defendant Timothy A. Towns' Motion to Dismiss ("Motion"). For the reasons stated below, the Motion will be granted.

**BACKGROUND**

On July 26, 2004, Plaintiff Christopher Peter Campion filed a Complaint regarding "God-given unalienable rights in the original estate - Article III; Constitution." [Doc. # 1 (Compl.) at 1.] In rambling prose with few factual allegations, Plaintiff complains about a seizure of property, possibly a boat, to satisfy tax liability as determined by the Internal Revenue Service ("IRS"). However, it is unclear whether a seizure has taken place. [*Id.* at 2-3.] Plaintiff considers the United States a foreign government, but does not allege foreign citizenship or any other basis for this allegation. [*Id.* at 3.] Because of the alleged status of the government, Plaintiff claims any action to seize his property must originate in a district

1 court. [Id.] Plaintiff seeks to have this Court enjoin the IRS from "any future presentments  
2 and theft or kidnap actions." [Id. at 4.]<sup>1</sup>

3 On November 24, 2004, Defendant filed a Motion to Dismiss. [Doc. # 2.] The  
4 included Memorandum in Support of the Motion asserted that the United States was the real  
5 party in interest because any action by Towns was in his official capacity as an IRS agent.  
6 [Doc. # 3 (Mem. Supp. Mot. Dismiss) at 2.] Defendant further asserts that the Anti-  
7 Injunction Act bars the remedy Plaintiff seeks and that the Federal Tort Claims Act prevents  
8 a suit for allegations of theft or kidnap. [Id. at 5-6.] Plaintiff has not responded to  
9 Defendant's Motion to Dismiss.<sup>2</sup>

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15 <sup>1</sup> Additionally, the Court will correct any misunderstanding Plaintiff has concerning  
16 the text of the Thirteenth Amendment to the United States Constitution. In his Complaint,  
17 Plaintiff includes a certified copy of the Thirteenth Amendment from the Colorado State  
18 Archives which was published in 1861. As included in that compilation, the Thirteenth  
19 Amendment would strip an individual of United States citizenship if they accept any title of  
20 nobility or honor. [Doc. # 1 (Compl.) at 46.] However, this is not the Thirteenth  
21 Amendment. The correct Thirteenth Amendment prohibits slavery. Although some people  
22 claim that state publication of the erroneous Thirteenth Amendment makes it valid, Article  
23 V of the Constitution does not so provide. Jol A. Silversmith, *The "Missing Thirteenth*  
24 *Amendment": Constitutional Nonsense and Titles of Nobility*, S. Cal. Interdic. L.J. 577, 590-  
25 91 and 593 (1999).

26 <sup>2</sup> Plaintiff did not respond to Defendant's Motion to Dismiss. Local Rule 7.2(i)  
27 provides that "If the opposing party does not serve and file the required answering  
28 memoranda . . . such non-compliance may be deemed a consent to the . . . granting of the  
motion and the Court may dispose of the motion summarily." Because *Ferdik v. Bonzalet*,  
963 F.2d 1258, 1261 (9th Cir. 1992) established that *pro se* litigants should be warned about  
procedural missteps before dismissal and because Defendant does not invoke Local Rule  
7.2(i) as grounds for granting his motion, this Court will examine whether it has subject  
matter jurisdiction.



1 Circuit held that suits against an IRS employee which originate from the employee's official  
2 duties are "essentially . . . suit[s] against the United States." As a result, Plaintiff's claims are  
3 barred by sovereign immunity unless waived by statute. Here, both the Anti-Injunction Act  
4 and the Federal Tort Claims Act establish that the United States has not waived sovereign  
5 immunity and thus Plaintiff's claims will be dismissed.

6 **1. Anti-Injunction Act**

7 Defendant claims that the Anti-Injunction Act prohibits a suit against the United  
8 States that seeks to prevent the IRS from collecting tax due. The Act provides that except  
9 in 12 statutory exceptions,<sup>3</sup> "no suit for the purpose of restraining the assessment or  
10 collection of any tax shall be maintained in any court by any person." 26 U.S.C. § 7421(a).  
11 The purpose of the Act "is to permit the United States to assess and collect taxes alleged to  
12 be due without judicial intervention, and to require that the legal right to the disputed sums  
13 be determined in a suit for refund." Enochs v. Williams Packing & Navigation Co., Inc., 370  
14 U.S. 1, 7 (1962). However, when it is clear that the government cannot prevail on the merits  
15 and the taxpayer will be irreparably harmed by the payment of any tax, the Supreme Court  
16 has held that injunctions can be issued to prevent any collection. Id. The taxpayer bears the  
17 burden of proving each element of the Williams Packing test and additionally must  
18 demonstrate that "he has no adequate remedy at law" to cure any irreparable harm. Church  
19 of Scientology of California v. United States, 920 F.2d 1481, 1486 (9th Cir. 1990).

20 Plaintiff makes no factual statements to demonstrate that he falls within the Williams  
21 Packing exception to the Anti-Injunction Act. At most, he only makes a conclusory  
22 statement that the IRS can only collect taxes from foreign individuals through district court  
23 actions. [Doc. # 1 (Compl.) at 3.] Plaintiff offers no support for this conclusion; for  
24 example, he never alleges that he is a foreign citizen. Moreover, Plaintiff has failed to  
25 establish how he is without remedy at law. Thus, he has not demonstrated why he should fall  
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27 <sup>3</sup> The 12 exceptions are not applicable in this case.

1 outside the "pay-first-then-sue" purpose of the Anti-Injunction Act. The Anti-Injunction Act  
2 bars Plaintiff's claim.

3 **2. Federal Tort Claims Act**

4 In the event that Plaintiff is seeking recovery based on his allegations of theft,  
5 Defendant asserts that the Federal Tort Claims Act precludes any action against the United  
6 States. The Federal Tort Claims Act waives the United States' sovereign immunity in tort  
7 claims. Morris v. United States, 521 F.2d 872, 874 (9th Cir. 1975). However, the waiver is  
8 limited by 28 U.S.C. § 2680, listing numerous tort claims for which the government has not  
9 waived immunity. Id. "If a plaintiff's tort claim falls within one of the exceptions, the  
10 district court lacks subject matter jurisdiction." Id. Section 2680(c) provides that the United  
11 States has not waived immunity from "[a]ny claim arising in respect of the assessment or  
12 collection of any tax . . . ."

13 Assuming that the IRS seized Plaintiff's property and this constitutes a "theft,"  
14 Plaintiff has made no showing the "theft" originated from any action other than the collection  
15 of taxes. In fact, all of the documents Plaintiff attached to his Complaint, except the  
16 Colorado State Archives compilation, are IRS documents relating to Plaintiff's tax liability.  
17 Therefore, any tort claim Plaintiff has against the United States arises from tax collection  
18 matters and the United States has not waived its sovereign immunity with regard to these  
19 claims.

20 **CONCLUSION**

21 Although Plaintiff only named Towns as a Defendant, because his suit stems from  
22 Towns' official duties as an officer of the IRS, the United States is the real party in interest.  
23 As a result, Plaintiff's claims can only proceed if the United States has waived its sovereign  
24 immunity. The Anti-Injunction Act and the Federal Tort Claims Act demonstrate that the  
25 United States has not waived any immunity and thus Plaintiff's claims will be dismissed.

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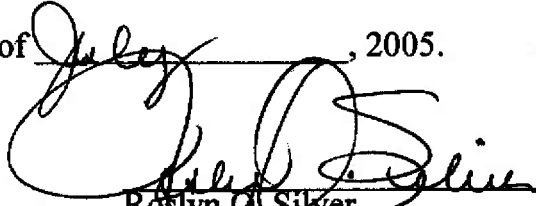
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Accordingly,

**IT IS ORDERED** that Defendant's Motion to Dismiss (Doc. # 2) is **GRANTED** and this matter is **DISMISSED**.

DATED this 15 day of July, 2005.



Roslyn Q. Silver  
United States District Judge