

ROWEN v. U.S., 05-3766MMC. (N.D.Cal. 11/02/2005)

[1] United States District Court, N.D. California

[2] 05-3766MMC.

[3] 2005.NCA.0000770<<http://www.versuslaw.com>>

[4] November 2, 2005.

[5] **ROBERT J. ROWEN, Plaintiff,**
v.
UNITED STATES OF AMERICA, Defendant.

[6] The opinion of the court was delivered by: MAXINE CHESNEY, District Judge

[7] ORDER DISMISSING ACTION FOR LACK OF JURISDICTION

[8] Before the Court is the motion, filed October 7, 2005 by defendant United States of America, to dismiss the instant action for lack of subject matter jurisdiction. In his response, plaintiff Robert J. Rowen ("Rowen") concedes that the Court lacks jurisdiction to hear the instant action, and that the action should be dismissed.

[9] Specifically, Rowen seeks a declaratory judgment against the United States of America with respect to "whether or not the plaintiff is a taxpayer pursuant to, and/or under 26 U.S.C. ? 7701(a)(14)." (See Compl. at 2.) This Court lacks jurisdiction to issue a declaratory judgment "with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986," a code section that is not at issue in the instant action. See 28 U.S.C. ? 2201; see also Hughes v. United States, 953 F.2d 531, 536-537 (9th Cir. 1991) (affirming dismissal of claim for declaratory relief under ? 2201 where claim concerned question of tax liability). Accordingly, defendant's motion to dismiss is hereby GRANTED, and the instant action is hereby DISMISSED.

[10] IT IS SO ORDERED.

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