

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5150

September Term, 2017

1:17-cv-00725-UNA

Filed On: October 26, 2017

Gregory C. Krug,

Appellant

v.

Commissioner of Internal Revenue Service,

Appellee

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Tatel and Pillard, Circuit Judges, and Ginsburg, Senior Circuit
Judge

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order filed April 19, 2017 be affirmed. The district court properly construed appellant's complaint as a petition for a writ of mandamus because it sought "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to [appellant]." 28 U.S.C. § 1361. Because appellant did not allege the information he provided resulted in "the initiation of an administrative or judicial action" or "collection of tax proceeds," he did not demonstrate that he was eligible for a whistleblower award under 26 U.S.C. § 7623(b). Simmons v. Comm'r of Internal Revenue, 523 F. App'x 728, 730 (D.C. Cir. 2013) (quoting Cooper v. Comm'r of Internal Revenue, 136 T.C. 597, 600 (2011)). The Commissioner has discretion whether to initiate an action against a taxpayer; the courts cannot compel the Commissioner to initiate such action or to accept appellant's claim. See Meidinger v. Comm'r of Internal Revenue, 559 Fed. App'x 5, 6 (D.C. Cir. 2014); Cohen v. Comm'r of Internal Revenue, 550 Fed. App'x 10, 11 (D.C. Cir. 2014). Therefore, appellant failed to show a clear and indisputable right to the extraordinary remedy of mandamus. See Cheney v. U.S. Dist. Court, 542 U.S. 367, 380-81 (2004).

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To the extent appellant's complaint could be construed as seeking relief other than a writ of mandamus, the district court lacked jurisdiction to provide such relief. The Tax Court has original jurisdiction to review whistleblower award determinations, see 26 U.S.C. § 7623(b)(4), and such review is available only after the Commissioner has initiated a proceeding against a taxpayer, see Simmons, 523 F. App'x. at 730.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk