

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ALBERT BECKER,

Plaintiff,

vs.

Case No.05-1277-JTM

SCOTT PENNY,

Defendant.

MEMORANDUM AND ORDER

This is an action in which pro se plaintiff Albert Becker seeks an order directing the IRS to grant him a CDP hearing regarding his 1998, 1999, 2000, and 2002 income taxes. The named defendant is an agent of the IRS Appeals Team. The defendant has moved to dismiss the case, arguing that the court is without subject matter jurisdiction to grant the requested relief; under 26 U.S.C. § 6320 and 6330, only the United States Tax Court can do so. Further, defendant argues, no relief could be granted because plaintiff failed to appeal the IRS's collection decision within the time provided by 26 U.S.C. § 6330(d)(1)(B).

Plaintiff has filed no response or objection to the motion to dismiss, and the time permitted for such response has passed. Accordingly, both for good cause shown and pursuant to D.Kan.R. 7.4, the defendant's Motion to Dismiss (Dkt. No. 3) is hereby granted.

IT IS SO ORDERED this 19th day of January, 2006.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE