UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 10-23507-CV-GOLD [LEAD CASE]
This document to be docketed in Case Nos. 10-23507-CV-GOLD; 10-23508-CV-GOLD; 10-23509-CV-GOLD; 10-23511-CV-GOLD

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.
_____/

ORDER DENYING MOTION TO RECONSIDER; MOTION TO STAY [ECF No. 53]

THIS CAUSE is before the Court upon Petitioner Miccosukee Tribe of Indians' ("Petitioner" or "the Tribe") omnibus motion filed as a "Motion to Reconsider this Court's Order of August 2, 2011 and Motion to Stay" ("Motion"). **[ECF No. 53]**. The Tribe moves for reconsideration pursuant to Rule 59(e) or in the alternative Rule 60(b) of the Federal Rules of Civil Procedure. The Tribe seeks reconsideration and alteration or amendment of my August 2, 2011 Order Granting United States' Motion to Deny Petitions to Quash **[ECF No. 16]**; Findings of Fact and Conclusions of Law ("August 2, 2011 Order"). **[ECF No. 52]**. Having carefully considered the Motion, applicable law, and being otherwise duly advised, I DENY the Motion for the reasons set forth *infra*.

I. Background

The complete procedural history and factual background of the instant four consolidated cases, in addition to Case No. 10-CV-21332, is fully set forth in my August

2, 2011 Order, which I expressly incorporate herein. **[ECF No. 52]**. On October 25, 2010, I granted the Tribe's Motion to Transfer and Consolidate, consolidating Case Nos. 10-23507, 10-23508, 10-23509, and 10-23511 with Case No. 10-23507 as the lead case. **[ECF No. 8]**. On February 17, 2011, I held a one-day evidentiary hearing **[ECF No. 39]** followed by the parties' closing arguments on February 18, 2011 **[ECF No. 42]**. On August 2, 2011, I issued the omnibus order and Findings of Fact and Conclusions of Law. **[ECF No. 52]**. On August 30, 2011, Petitioner filed the instant Motion.

II. Applicable law

Motions for reconsideration may be brought pursuant to either Rule 59(e) or Rule 60(b). *See Mahone v. Ray*, 326 F.3d 1176, 1178 n.1 (11th Cir. 2003). Rule 59(e) requires a motion to alter or amend a judgment to be filed no later than 28 days after the entry of the judgment. Fed. R. Civ. P. 59(e). Because the Tribe's Motion requests relief from an order—specifically, findings of fact and conclusions of law—and not a modification or alteration of a judgment, I construe the Motion as one made pursuant to Federal Rule of Civil Procedure 60(b).[1] *See Rice v. Ford Motor Co.*, 88 F.3d 914, 918 (11th Cir. 1996) (construing Rule 59(e) motion as a Rule 60(b) motion despite fact that the motion did not cite Rule 60(b) or any of the specific grounds listed in the rule as a basis for relief, because Rule 59(e) was inapplicable given the circumstances).

Federal Rule of Civil Procedure 60(b) permits district courts to grant relief from a final judgment, order, or proceeding for the following reasons: "(1) mistake, inadvertence, surprise, or excusable neglect;" (2) newly discovered evidence; (3) fraud;

[1] Even under a Rule 59(e) analysis, the Tribe's Motion for Reconsideration must be denied because there is no "need to correct clear error or prevent manifest injustice" as explained *infra*. Fed. R. Civ. P. 59(e)(3).

(4) the judgment is void; (5) the judgment has been satisfied; or "(6) any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b). However, "relief under Rule 60(b) is an 'extraordinary remedy which may be invoked only upon a showing of exceptional circumstances.'" *Enax v. Goldsmith*, 322 F. Appx. 833, 835 (11th Cir. 2009) (citing *Crapp v. City of Miami Beach*, 242 F.3d 1017, 1020 (11th Cir. 2001)). Furthermore, a motion for reconsideration cannot be used to re-litigate old matters, raise arguments, or present evidence that could have been raised earlier. *Richardson v. Johnson*, 598 F.3d 734, 740 (11th Cir. 2010) (quoting *Michael Linet, Inc. v. Village of Wellington,* 408 F.3d 757, 763 (11th Cir. 2005)).

It is well-established that a motion for reconsideration "should not be used by the parties to set forth new theories of law." *Mays v. U.S. Postal Serv.*, 122 F.3d 43, 46 (11th Cir. 1997); *Lussier v. Dugger*, 904 F.2d 661, 667 (11th Cir. 1990) (determining that motions for reconsideration "should not be used to raise arguments which could, and should, have been made before the judgment is issued"). A motion for reconsideration "may not be used to challenge mistakes of law which could have been raised on direct appeal." *Sherrod v. Palm Beach Cnty. Sch. Dist.*, 237 F. App'x 423, 425 (11th Cir. 2007) (citing *Am. Bankers Ins. Co. of Fla. v. N.W. Nat'l Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999)).

III. Analysis

A. Motion for reconsideration

The Tribe moves for reconsideration on the following grounds: (1) clear error of law when the Court found that the Tribe and its governmental records were not entitled

to sovereign immunity because the records were stored outside the reservation; (2) clear error of law when the Court decided the issue under the limited sovereign immunity principles for a former tribal official's private conduct as opposed to sovereign immunity principles afforded to Indian tribes; (3) definition of "person" in Internal Revenue Code Section 7701(a)(1) does not include Indian tribes and therefore Section 7601 does not afford the IRS power to issue a summons to obtain tribal records; and (4) clear error of fact when the Court interpreted the issues under the standard of a possible non-complying taxpayer instead of whether certain regulations promulgated by the IRS apply to the Tribe and its members. **[ECF No. 53]**. Because none of these arguments serve as a basis for granting the Tribe's requested relief, I must DENY the Motion for Reconsideration.

1. Records "stored outside the reservation"

As a preliminary matter, the August 2, 2011 Order does not refer to the notion that—as the Tribe claims—sovereign immunity does not apply because the records "were stored outside the reservation." *See* **[ECF No. 53 § I]**. The Tribe argues that "[a] careful review of the Order of August 2, 2011 shows that this Court has misapprehended the Miccosukee Tribe's argument when it found that because the tribal governmental financial records were stored outside the Miccosukee Reservation those financial records were not protected by the doctrine of tribal sovereign immunity." *Id.* at 3 (emphasis added).

In fact, the August 2, 2011 Order makes no specific reference to the records being stored outside the Tribe's reservation—let alone any suggestion that this is the

reason for which the Tribe is not entitled to tribal sovereign immunity in this instance. Indeed, the August 2, 2011 Order only refers to the reservation to describe the transport of monies and currency from the casino to the reservation. *See* **[ECF No. 52 § I ¶¶ 64, 73, 79]**. While the August 2, 2011 Order is clear that the records are in the possession of the financial institutions, hence the IRS' issuance of the summons to third-party tribal recordkeepers, there is no discussion regarding tribal sovereign immunity being inapplicable merely because the records are stored outside of the reservation—nor does the Tribe cite any portions of the August 2, 2011 Order which purportedly discuss this matter. *See e.g.*, *id.* at ¶ 23.

The August 2, 2011 Order does not imply that the geographic location of records is determinative of whether the Tribe may properly claim that tribal sovereign immunity precludes third-party tribal recordkeepers from turning over records to the IRS. It is far-fetched that the August 2, 2011 Order, as the Tribe claims, "will have an immediate negative impact upon the thousands of current federal programs that tribal governments administer every day with their federal counterparts because it will force all record-keeping to be maintained exclusively inside the Reservation." **[ECF No. 53, p. 5]**. There is simply no basis for granting the Motion with respect to the Tribe's first argument, as the location of the records was not a basis for the Court's determination of the motions to quash. Similarly, this matter was not addressed in detail in the parties' briefs or at the evidentiary hearing. Since the issue of whether the records were stored on the reservation was not even part of the August 2, 2011 Order, there can be no reconsideration of it and the Motion must be denied with respect to this argument.

Further, to the extent the Tribe also argues that this case centers upon an "arbitrary allegation . . . that certain IRS regulations apply to the Miccosukee Tribe and its members" **[ECF No. 53, p. 3]**, I decline to grant reconsideration on this ground. As the August 2, 2011 Order makes clear, the IRS determined that there were sufficient grounds for issuing the summonses following the prior investigation of the Tribe's chairperson. *See e.g.*, **[ECF No. 52 § II ¶¶ 34, 44-46]**; *see also infra* § III.A.3 .

2. Tribal official v. Indian tribes generally

Next, the Tribe argues that while a tribal officer's immunity is qualified, rather than absolute, the Tribe's immunity is absolute, and not qualified. **[ECF No. 53 § II]**. As set forth in my August 2, 2011 Order, I declined to reconsider portions of my prior order addressing tribal sovereign immunity issues in Case No. 10-21332, which I expressly incorporated into my August 2, 2011 Order. *See* **[ECF No. 52 § II ¶¶ 8, 13]**. While the Tribe correctly notes in the instant Motion that there is an issue of whether the Tribe waived its sovereign immunity or whether Congress abrogated such sovereign immunity by authorizing a suit **[ECF No. 53, p. 6]**, the Tribe fails to set forth any basis for reconsideration. As the August 2, 2011 Order points out, the Tribe's argument that the records are tribal records subject to tribal sovereign immunity faces the flaws that the Tribe advanced in Case No. 10-21332. **[ECF No. 52 § II ¶¶ 18-19]**. Namely, the Tribe's attempt to assert tribal sovereign immunity against the sovereign of the federal government is unsupported by the case law. *See e.g.*, *United States v. Red Lake Band of Chippewa Indians*, 827 F.2d 380, 382 (8th Cir. 1987). Therefore, Petitioner is simply

relitigating matters which were already addressed and determined in the August 2, 2011 Order, as well as in Case No. 10-21332.

3. "Person" as Defined in Internal Revenue Code Section 7701(a)(1)

The Tribe argues that the word "person" in Internal Revenue Code Section 7701(a)(1) does not specifically include governmental or tribal entities, but rather covers "an individual, a trust, estate, partnership, association, company or corporation." 26 U.S.C. § 7701(a)(1). As set forth in the August 2, 2011 Order, the Tenth Circuit noted that "were we to conclude that Indian tribes and tribal organizations are excluded from § 7701(a)(1)'s definition of 'person,' we would essentially exempt tribes and tribal organizations from many forms of federal tax liability and render entire sections of the IRC superfluous." **[ECF No. 52, p. 26, fn. 11]** (citing *Chickasaw Nation v. United States*, 208 F.3d 871, 880 (10th Cir. 2000), *aff'd, on other grounds* 534 U.S. 84 (2001)); *id.* ("Congress unambiguously intended for the word 'person,' as used in § 7701(a)(1), to encompass all legal entities, including Indian tribes and tribal organizations.").

The Tribe cites *Inyo County, Cal. v. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony*, 538 U.S. 701, 709 (2003) for the proposition that a "person" does not include the sovereign. **[ECF No. 53, p. 7]**. However, the quoted portion of the case merely discussed the position of the *amicus curiae* in *Inyo*. *See Inyo County*, 538 U.S. at 709 ("The issue pivotal here is whether a tribe qualifies as a claimant—a 'person within the jurisdiction' of the United States—under § 1983. The United States maintains it does not, invoking the Court's 'longstanding interpretive presumption that 'person' does not include the sovereign,' a presumption that 'may be

disregarded only upon some affirmative showing of statutory intent to the contrary.'") (citations omitted). In *Inyo County*, the Supreme Court interpreted 42 U.S.C. § 1983, a statute entirely separate and distinct from Section 7701(a)(1). *Id.* at 704.

Further, to the extent the Tribe claims "ambiguities in federal laws implicating Indian rights must be resolved in the Indians' favor" **[ECF No. 53, p. 7]**, the Tenth Circuit's opinion in *Chickasaw Nation* does not raise any ambiguities. As set forth *supra* and in the August 2, 2011 Order, the Tenth Circuit determined that "person" for purposes of Section 7701 included Indian tribes and tribal organizations. Finally, while the Tribe goes to certain lengths to distinguish *Ohio v. Helvering*, 292 U.S. 360 (1934), this case is merely cited in a Treasury Determination revenue ruling which the August 2, 2011 Order discussed in the following context: "[f]or purposes of providing additional background information, and because the IRS is investigating whether the Tribe properly reported and withheld requirements under the Internal Revenue Code, I include this revenue ruling to the extent that it assists in interpreting portions of the Code." **[ECF No. 52, p. 25, fn. 10]**. Therefore, the Tribe has not met its burden to demonstrate that relief is warranted under Rule 60(b) with respect to the issue of whether the Tribe is a "person" pursuant to Section 7701 of the Internal Revenue Code.

4. Non-complying taxpayer

Finally, the Tribe argues that the August 2, 2011 Order was "based . . . solely on the arbitrary and unsupported conclusions of an IRS Agent that certain regulations promulgated by the IRS apply to the Miccosukee Tribe and its members." **[ECF No. 53, p. 9]**. This statement stands in obvious contrast to the findings and conclusions of the

August 2, 2011 Order as a whole. *See generally* **[ECF No. 52]**. The Tribe also reiterates its belief there is no legitimate purpose for the investigation, relitigating a matter that has already been decided and determined. **[ECF No. 53, p. 9]**. Indeed, the Tribe cites Paragraph 57 of the Findings of Fact (Section I) wherein IRS Agent Furnas described the types of 1099 forms that may have been required, but ignores the Conclusions of Law (Section II) wherein I determined that there was no improper purpose for the investigation based on the evidence before the Court at the evidentiary hearing, through the deposition of Agent Furnas, and in the parties' briefs.[2] *See* **[ECF No. 52 § II.C.iii]**. Contrary to the Tribe's contention that my August 2, 2011 Order found that the purpose of the investigation was for the IRS "merely to instruct the Tribe on any reporting and withholding requirements," (*see* **[ECF No. 53, pp. 9-10]**), as outlined in the August 2, 2011 Order, one purpose of the investigation is to determine whether proper documents, such as the 1099 forms and the 945 forms, were filed in light of the IRS' prior investigations and distributions from the Tribe to tribal members. **[ECF No. 52 § II.C]**; *see also id.* at ¶¶ 65, 104, 123. Accordingly, the Tribe's misapprehension of the August 2, 2011 Order and its specific findings and conclusions in the instant Motion also impedes its ability to demonstrate a proper basis for reconsideration on its fourth and final argument.

[2] As noted in the August 2, 2011 Order, to the extent factual findings appear under the "Conclusions of Law" heading or *vice versa*, the pertinent facts or conclusions shall be construed appropriately and shall not be constrained by the heading under which they appear. **[ECF No. 52, p. 2, fn. 1]**.

B. Motion to stay

In support of its request for a stay, the Tribe cites a Tenth Circuit case for the proposition that "granting or denying a motion to stay is within the sound discretion of the district court" and an Eleventh Circuit case regarding Indian Tribes' natural rights. **[ECF No. 53, pp. 10-11]**. Neither of these cases supports a stay in the instant circumstances. Further, the issue of whether a stay in this case is appropriate is moot in light of the fact that the instant order DENIES the Tribe's Motion for Reconsideration.

IV. Conclusion

Petitioner has failed to meet any of the requirements necessary to warrant relief under Rule 60(b) and instead, misconstrues selective portions of the August 2, 2011 Order in an attempt to seek reconsideration. Therefore, I must decline to grant the Tribe's Motion for the reasons stated *infra*. Having reviewed the Motion, applicable case law, record, and being otherwise duly advised, it is hereby

ORDERED AND ADJUDGED that:

1. Petitioner's "Motion to Reconsider this Court's Order of August 2, 2011 and Motion to Stay" **[ECF No. 53]** is DENIED.

2. This case remains CLOSED.

DONE and ORDERED in Chambers in Miami, Florida, this 9 day of September, 2011.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc: United States Magistrate Judge Jonathan Goodman
Counsel of record