

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 06-160T

(Filed: July 14, 2006)

KIRK ESTES, *pro se*,
Plaintiff,
v.
UNITED STATES,
Defendant.

ORDER

Plaintiff Kirk Estes filed suit in this court on February 28, 2006, seeking relief from the government for allegedly illegal assessments of taxes. Mr. Estes avers that he is not a taxpayer, as the term is used in the Internal Revenue Code, and has not engaged in any “specific excise taxable activity” upon which a tax obligation could have accrued. Compl. at 3. Additionally, he challenges the validity of the processes used by the government to assess and collect taxes against and from him. Compl. at 12-13. The government has moved to dismiss Mr. Estes’ complaint for lack of jurisdiction, averring that Mr. Estes does not allege that he overpaid his taxes in any given year or that he filed a claim for refund with the Internal Revenue Service (“IRS”) which that agency denied. United States’ Motion to Dismiss For Lack of Jurisdiction (“Def.’s Mot.”) at 2. In response, Mr. Estes has contended that the IRS has never issued a valid assessment certificate against him and consequently that the IRS’s collection efforts in effect have “stolen or embezzled” his funds. Claimant’s Response to United States’ Motion to Dismiss for Lack of Jurisdiction (“Pl.’s Resp.”) at 2.

For the reasons set out below, the court grants the government’s motion to dismiss.

BACKGROUND

Attached to Mr. Estes’ complaint are numerous documents he has designated as the “administrative record.” Compl. at 2. These materials include copies of IRS notices of deficiency and tax liens, the results of Mr. Estes’ inquiries to the IRS under the Freedom of Information Act requesting his tax records, and several complaints sent to the IRS and other government agencies alleging fraud and other unlawful conduct on the part of the IRS and its agents in assessing taxes and penalties against Mr. Estes, plus a copy of a complaint made by

Mr. Estes against his employer for his employer's cooperation with the IRS in connection with a tax levy. None of these documents provide any evidence that Mr. Estes filed a tax refund claim with the IRS for any year. Based on his attached documentation, Mr. Estes seeks "judgment for restitution of the amount of losses and damages proven to the record." Compl. at 12. In addition, he asks the court to "enter declaratory determination that [he] is not a taxpayer as that term is used by Congress in the Internal Revenue Code" and "enjoin the [government] from any internal revenue collection activity relating to [him]." *Id.*

In support of its motion to dismiss, the government attached a Certificate of Assessments and Payments respecting Mr. Estes' account with the IRS, reporting that Mr. Estes failed to file a tax return in any year from 2000 through 2005. *See* Def.'s Mot. at 10-26. The Certificate also shows that Mr. Estes has outstanding tax liabilities for the years 2002 through 2005. *See id.* at 18-26.¹

Apart from contesting the government's motion to dismiss, Mr. Estes asks the court to transfer his case to the proper forum pursuant to 28 U.S.C. § 1631 if this court lacks jurisdiction over his claims. Pl.'s Resp. at 12-13.

ANALYSIS

Mr. Estes bears the burden of proving that this court has jurisdiction to consider his claim. *See McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936). In determining whether jurisdiction exists, federal courts must accept as true the facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *See Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995). Courts hold complaints filed by persons appearing *pro se* to less rigorous standards than those applied to formal pleadings prepared by counsel. Nonetheless, the court's jurisdictional requirements must still be satisfied before Mr. Estes' complaint can be entertained. *See Henke*, 60 F.3d at 799.

Under the Tucker Act, the Court of Federal Claims has "jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1). The Tucker Act itself does not provide a right to recovery. *United States v. Testan*, 424 U.S. 392, 398 (1976). To establish such a right, the plaintiff must identify a substantive claim that "can fairly be interpreted as mandating compensation by the Federal Government for damages sustained." *United States v. Mitchell*, 463 U.S. 206, 217 (1983) (citing *Testan*, 424 U.S. at 400).

¹Mr. Estes' tax liabilities for 2000 and 2001 have been satisfied by a federal tax lien. *See* Def.'s Mot. at 12, 17.

Viewed in a light most favorable to him, Mr. Estes' claim for damages caused by the "unlawful collection activities" of the IRS, Compl. at 1, alleges a tort claim against the government. In that respect, as the Tucker Act plainly states, this court does not have jurisdiction over claims premised on tort. 28 U.S.C. § 1491(a)(1); *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997). Rather, under 26 U.S.C. § 7433(a), "in connection with any collection of Federal tax with respect to a taxpayer[,]. . . such taxpayer may bring a civil action for damages against the United States in a district court of the United States . . . [and] such civil action shall be the exclusive remedy for recovering damages resulting from such actions." 26 U.S.C. § 7433(a). Accordingly, a federal district court would have exclusive jurisdiction over Mr. Estes' tort claims arising from the government's tax collection activities.²

Moreover, this court does not have jurisdiction to provide the equitable relief Mr. Estes seeks. See *United States v. King*, 395 U.S. 1, 2-3 (1969). Mr. Estes identifies the All Writs Act to support this court's jurisdiction over his claims for declaratory and injunctive relief. Compl. at 12. Under the All Writs Act, "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). However, the issuance of writs under this act "is to be invoked only in extraordinary circumstances." See *Security Sav. and Loan Ass'n v. United States*, 26 Cl. Ct. 1000, 1003 (1992) (quoting *Kerr v. United States Dist. Court for the N. Dist. of Cal.*, 426 U.S. 394, 402 (1976)). In *Security Savings*, the court commented that the Claims Court had never issued an injunction under the All Writs Act, and that the All Writs Act does not expand a court's jurisdiction beyond "clearly expressed statutory limits." 26 Cl. Ct. at 1003 (citing *Clark v. Busey*, 959 F.2d 808 (9th Cir. 1992)). This court's jurisdiction to issue declaratory or injunctive relief applies in limited circumstances not applicable here, and the All Writs Act does not independently confer jurisdiction on this court to hear Mr. Estes' claims.

Most importantly, Mr. Estes has not alleged a tax refund claim. Under 28 U.S.C. § 1346, this court has jurisdiction, concurrently with district courts, over "[a]ny civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected" 28 U.S.C. § 1346(a)(1). Under Rule 9(h)(6) of the Rules of the Court of Federal Claims ("RCFC"), a plaintiff's complaint in a tax refund suit must set out with specificity the amount and date of each payment to be refunded. In the case at hand, Mr. Estes has not set out in his complaint the amount or date of any payments to be refunded. In fact, he adamantly denies that he is making a tax refund claim because he does not believe he has "overpaid his taxes in any specific year." Pl.'s Resp. at 4. Furthermore, as a prerequisite to the court's jurisdiction over such a claim, a plaintiff must first pay the disputed tax and then file a refund claim with the IRS. See 28 U.S.C. § 7422(a); *Flora v. United States*, 362 U.S. 145, 150

² In like vein, Mr. Estes asserts that the Federal Tort Claims Act ("FTCA") provides a basis for this court's jurisdiction. See Compl. at 12. That assertion is unavailing. The FTCA grants exclusive jurisdiction to the district courts to hear tort claims against the government, but it does not apply to "any claim arising in respect of the assessment or collection of any tax." 28 U.S.C. §§ 1346(b), 2680(c).

(1960) (holding that the language of 28 U.S.C. § 1346(a)(1) requires full payment of a tax before a suit for recovery); *Shore v. United States*, 9 F.3d 1524, 1526 (Fed. Cir. 1993) (applying *Flora* full-payment rule); *Parsons ex rel. Linmar Prop. Mgmt. Trust v. United States*, 65 Fed. Cl. 638, 640 (2005) (same), *aff'd*, No. 05-5168, 2006 WL 572205 (Fed. Cir. Mar. 10, 2006).³ According to the IRS' Certificates, Mr. Estes has outstanding tax liabilities from 2002 to 2005. Def.'s Mot. at 18-26. Although Mr. Estes' tax liabilities have been paid in full for 2000 and 2001, he has provided no evidence in his pleadings that he has filed a refund claim with the IRS for these years or any other year. For these reasons, Mr. Estes has failed to satisfy the necessary prerequisites to invoke this court's jurisdiction over his claims.

Mr. Estes argues in the alternative that his claims should be transferred "to the appropriate court of competent jurisdiction" pursuant to 28 U.S.C. § 1631. Pl.'s Resp. at 12. Under 28 U.S.C. § 1631, a federal court that does not have jurisdiction over a case may transfer the action to another federal court that does have jurisdiction if (1) the transferor court lacks jurisdiction, (2) the case could have been brought in the transferee court at the time the case was filed, and (3) such transfer is in the interest of justice. *Gray v. United States*, 69 Fed. Cl. 95, 98 (2005). In the instant case, the first element, the transferor court's lack of jurisdiction, has been met. However, Mr. Estes' request for transfer fails on the second element because he has not established in his pleadings that his case could have been brought originally in a district court. The district court would lack jurisdiction over Mr. Estes' potential tax refund claim for the same reasons that this court lacks jurisdiction: the failure to pay the disputed tax in full and to file a refund claim with the IRS. In addition, for a district court to have jurisdiction over Mr. Estes' tort claim arising out of the collection of a federal tax, he must first demonstrate that he has exhausted all the administrative remedies available to him. 26 U.S.C. § 7433(d)(1). Mr. Estes has not demonstrated in his complaint or attached documentation that he has exhausted all available administrative remedies. The procedures of an administrative claim are set out in Treas. Reg. § 301.7433-1(e).⁴ Although Mr. Estes submitted copies of letters that he sent to the

³28 U.S.C. § 7422(a) states in pertinent part that
[n]o suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

⁴Treas. Reg. § 301.7433-1(e) states:
(1) . . . An administrative claim for the lesser of \$1,000,000 (\$100,000 in the case of negligence) or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the Area Director, Attn: Compliance Technical Support

IRS and Department of the Treasury, these letters do not appear to satisfy the requirements for an administrative claim. *See* Treas. Reg. § 301.7433-1(e). Finally, Mr. Estes' prayer for injunctive relief is barred by the Tax Anti-Injunction Act. 26 U.S.C. § 7421(a) ("No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."). Accordingly, because Mr. Estes has not shown that his claim could have originally been brought in a federal district court, the court will not transfer his case.

CONCLUSION

For the reasons stated, the government's motion to dismiss is GRANTED, and the case shall be dismissed for lack of subject matter jurisdiction in accord with RCFC 12(b)(1). The clerk shall enter judgment accordingly. No costs.

It is so ORDERED.

Charles F. Lettow
Judge

Manager of the area in which the taxpayer currently resides.
(2) . . . The administrative claim shall include: (i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim; (ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service); (iii) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence); (iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and (v) The signature of the taxpayer or duly authorized representative.