

# In the United States Court of Federal Claims

No. 10-768T  
(Filed: June 16, 2011)  
(Not for Publication)

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WILLIAM H. DOURLAIN, \*  
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Plaintiff, \*  
\*  
v. \*  
\*  
THE UNITED STATES, \*  
\*  
Defendant. \*  
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## ORDER OF DISMISSAL

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WILLIAMS, Judge.

This matter comes before the Court on Defendant’s motion to dismiss for lack of subject-matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (“RCFC”). Plaintiff *pro se*, William Dourlain, alleges that the IRS “withheld and seized . . . some \$50,000” via an improper levy and tax lien. Compl. at 10.<sup>1</sup> Because Plaintiff’s statutory claims are not based on money-mandating statutes and he has not satisfied the jurisdictional prerequisites for bringing a tax refund claim, Defendant’s motion to dismiss is granted.

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<sup>1</sup> Plaintiff names the Internal Revenue Service (“IRS”) as a defendant. Compl. at 1. However, “[i]t is ‘well established that the jurisdiction of this court extends only to claims against the United States.’” *Fullard v. United States*, 78 Fed. Cl. 294, 300 (2007) (quoting *Nat’l City Bank v. United States*, 143 Ct. Cl. 154, 164 (1958)).

## **Background**<sup>2</sup>

Plaintiff filed the instant action on November 8, 2010, alleging that the IRS unlawfully levied funds and imposed a lien to satisfy tax liabilities.<sup>3</sup> According to a Notice of Levy on Wages, Salary and Other Income (“Notice of Levy”) dated February 11, 2010, the IRS requested that Plaintiff’s employer transfer to the IRS from Plaintiff’s wages and salary \$40,026.69 to satisfy a civil penalty and tax liabilities for the periods ending on December 31, 1999, December 31, 2001, and December, 31, 2002. A Notice of Federal Tax Lien dated February 23, 2010, informed Plaintiff of a lien on Plaintiff’s property in the amount of \$26,717.20, resulting from unpaid taxes for periods ending on December 31, 1999, December 31, 2001, and December 31, 2002. Plaintiff alleges that beginning on or about March 8, 2010, his wages were garnished without a court order or his consent.

Plaintiff does not appear to contest the underlying tax liabilities. Rather, he avers that in garnishing his wages to satisfy those liabilities, the IRS violated the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and 44 U.S.C. § 1505 “by not having regulations dealing with assessment and penalties currently published in the Federal Register and adversely affecting the plaintiff[’s] rights.” Compl. at 7. Plaintiff further alleges that because 26 C.F.R Part 1 does not include the requisite regulations for “assessment, liens, levy and penalties,” the IRS lacks “authority to issue a lawful Lien or Notice of levy.” *Id.* at 10. Plaintiff asks this Court to order a refund of the amount “withheld and seized” as a result of the levy and lien. *Id.* On February 7, 2011, Defendant moved to dismiss the complaint for lack of subject-matter jurisdiction. On April 26, 2010, Plaintiff opposed the motion, attaching a document entitled “Claim For Refund” to his reply.

## **Discussion**

Before the Court proceeds to the merits of the action, Plaintiff bears the burden of establishing subject-matter jurisdiction by a preponderance of the evidence. *See, e.g., Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988); *Naskar v. United States*, 82 Fed. Cl. 319, 320 (2008); *see also Fullard*, 78 Fed. Cl. at 299. “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” RCFC 12(h)(3). When deciding a motion to dismiss for lack of subject-matter jurisdiction, the Court must assume as true all undisputed allegations of fact made by the nonmovant and draw all reasonable inferences from those facts in the nonmovant’s favor. *See Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995); *Naskar*, 82 Fed. Cl. at 320. “[C]omplaints drafted by pro se litigants are held to ‘less stringent standards than formal pleadings drafted by lawyers,’ but, ‘[t]his latitude . . . does not relieve a pro se plaintiff from meeting jurisdictional requirements.’” *Naskar*, 82 Fed. Cl. at 320 (citation omitted).

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<sup>2</sup> This background is derived from the complaint, motion papers, and their accompanying exhibits.

<sup>3</sup> Plaintiff attached the Notice of Levy and Notice of Federal Tax Lien to the complaint.

## **The Court Lacks Subject-Matter Jurisdiction over Plaintiff's Statutory Claims**

“The Court of Federal Claims is a court of limited jurisdiction.” Fullard, 78 Fed. Cl. at 299. According to the Tucker Act, this Court:

shall have 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).

To be cognizable under the Tucker Act, the claim must be one for money damages against the United States, and the plaintiff must demonstrate that the source of substantive law he or she relies upon is a money-mandating source. Fullard, 78 Fed. Cl. at 299-300. However, the Tucker Act does not, by itself, create a substantive right enforceable against the United States for monetary relief. Ferreiro v. United States, 501 F.3d 1349, 1351 (Fed. Cir. 2007). A plaintiff must identify a separate contract, regulation, statute, or Constitutional provision, which, if violated, provides for a claim for money damages against the United States. Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin., 525 F.3d 1299, 1306 (Fed. Cir. 2008).

Here, Plaintiff claims that Defendant violated 5 U.S.C. § 552 and 44 U.S.C. § 1505 by not “having regulations dealing with assessment and penalties” in the Federal Register. Compl. at 7.<sup>4</sup> Section 1505 enumerates three categories of documents to be published in the Federal Register: (1) Proclamations and Executive Orders, (2) Documents having general applicability and legal effect; (3) Documents required to be published by Congress; (4) and Documents authorized to be published by regulations, excluding comments and news items. 44 U.S.C. § 1505. However, the plain language of § 1505 does not provide for money damages against the United States as a result of noncompliance. Furthermore, to the extent Plaintiff alleges a violation of FOIA, it is well settled that this Court lacks jurisdiction to hear this claim. See Leitner v. United States, 92 Fed. Cl. 220, 224 (2010) (holding that the Court of Federal Claims “does not have jurisdiction over FOIA claims.”).

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<sup>4</sup> Plaintiff further alleges that the Government “violated the Administrative Procedure Act under Title 5 of the USC” by “sending the Notice of Levy . . . and filing a Notice of Federal Tax Lien.” Compl. at 2. The Court lacks jurisdiction to hear this claim. See Reilly v. United States, 93 Fed. Cl. 643, 650 (2010) (“This court also lacks, for that matter, jurisdiction over these claims under the [APA] as jurisdiction over claims relying upon that statute lies solely in the district courts.”).

**The Court Lacks Subject-Matter Jurisdiction over Plaintiff’s Allegations Regarding the IRS’s Tax Collection Efforts**

26 U.S.C. § 7433(a) vests exclusive jurisdiction to hear claims regarding purportedly illegal or unauthorized IRS collection activities in federal district courts. Section 7433(a) states in pertinent part:

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

26 U.S.C. § 7433(a).

In Ledford v. United States, the Federal Circuit affirmed this Court’s dismissal of a claim regarding purportedly unlawful IRS tax collection activities. 297 F.3d 1378, 1382 (Fed. Cir. 2002) (per curiam). As the Federal Circuit explained:

Congress has provided that claims for damages such as those alleged by Mr. Ledford must be brought exclusively before a district court of the United States. The Court of Federal Claims is not a district court of the United States, and therefore it lacks subject matter jurisdiction over Mr. Ledford’s damages claims.

Id.; see also Leitner, 92 Fed. Cl. at 224 (“[F]ederal district courts have exclusive jurisdiction over claims for damages flowing from the allegedly unlawful collection activities of the IRS, and [the Court of Federal Claims] is not a federal district court.”).<sup>5</sup> As such, the Court lacks jurisdiction over Plaintiff’s allegations regarding the IRS’s tax collection efforts.

**Conclusion**

Defendant’s motion to dismiss is **GRANTED**.

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**MARY ELLEN COSTER WILLIAMS**  
**JUDGE**

<sup>5</sup> According to 28 U.S.C. § 1631, when “a civil action is filed in a court . . . [which] finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed.” Here, transfer is not warranted in the interest of justice given the nature of Plaintiff’s claim and his numerous prior lawsuits challenging the IRS’s tax collection activities. See Vlahakis v. United States, 215 Ct. Cl. 1018, 1019 (1978).