

asserting that the United States Department of the Treasury had “deprived [him] of the right to collect a refund for the over-payment of employment tax.” Compl. at 1. The refund amounts that plaintiff claims he was prevented from recovering were \$1796 and \$85.41. *Id.* at 2. Plaintiff seeks approximately \$150,000 in punitive damages for an alleged deprivation of his rights. *Id.* at 6. Defendant United States filed its motion to dismiss for lack of jurisdiction on May 12, 2006 under Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC), and in that motion asserted that plaintiff’s claims could also be dismissed for failure to state a claim upon which relief could be granted. Defendant’s motion has been fully briefed, and is granted for the reasons set forth below.

BACKGROUND¹

On November 1, 2005, plaintiff sent two “Claim for Refund” forms to the United States Department of the Treasury, Internal Revenue Service (IRS). The forms alleged that plaintiff was owed refunds for the overpayment of employment taxes for two tax years: \$1796 for 1999, and \$85.41 for 2000. The form, IRS Form 843, instructs that applicants for refunds should “[e]xplain why you believe this claim should be allowed, and show computation of tax refund” Compl. Ex. A. The sole entry in the “Explanation and additional claims” block of plaintiff’s forms is “Claim of Right for the Overpayment of tax.” *Id.*

Plaintiff Joseph Fuce, II completed these forms employing a Social Security Number and an Employer Identification Number which, according to defendant, do not correspond to any person named Joseph Fuce, II. Plaintiff has apparently not responded to defendant’s attempt to obtain correct identification numbers for plaintiff, and the IRS has apparently been unable to match plaintiff’s name and address, as reported in the complaint, with any taxpayer. Plaintiff has not controverted defendant’s allegation that the refund claims submitted to the IRS on November 1, 2005 do not bear correct identification numbers.

The IRS in Philadelphia, Pennsylvania received plaintiff’s refund claim forms on November 3, 2005, and IRS employee “P. Jenigen” signed for the envelope. Compl. Ex. B. Subsequently, plaintiff followed up on his refund claims

¹/ The facts reported here, unless otherwise indicated, are taken from plaintiff’s filings and are assumed to be true for the sole purpose of deciding defendant’s motion.

by sending three communications to the Department of the Treasury. First, on January 9, 2006, he faxed a “Notice of Intent” to Anna E. Cabral in Washington, D.C., marking his communication, “ATTN::S.-P.:Jenigen:, IRS Agent.” Compl. Ex. C. The message to Ms. Anna Escobedo Cabral, Treasurer of the United States, warned of plaintiff’s plan to file suit in this court if his refund was not received by February 3, 2006. *Id.*

Next, on January 30, 2006 plaintiff mailed another “Notice of Intent,” similar to the previous one, addressed to John Snow, then Secretary of the Treasury, and to Anna E. Cabral, Treasurer of the United States, again marked “ATTN::S.-P.:Jenigen:, IRS Agent.” Compl. Ex. D. This notice to then-Secretary Snow once again warned of an imminent suit if plaintiff did not receive his refund before February 3, 2006. This mailing was received and signed for by Treasury Department employee “P. Dyson” on February 6, 2006. Compl. Ex. E.

On March 6, 2006, plaintiff mailed a “Final Notice” to then-Secretary Snow and Treasurer of the United States Cabral, also marked “ATTN::S.-P.:Jenigen:, IRS Agent,” asserting that Treasury employees had received eight refund claim forms requesting a total refund of \$7,894.51. Compl. Ex. F. The final notice alleged a criminal violation of 18 U.S.C. § 285 (2000) for the “taking of claims” by employees Jenigen and Dyson, and warned that unless plaintiff immediately received \$7,894.51 he would file suit in this court and seek punitive damages. *Id.* Plaintiff’s complaint was filed April 3, 2006.

DISCUSSION

I. Standard of Review

A. *Pro Se* Litigants

Pro se plaintiffs are entitled to a liberal construction of their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (requiring that allegations contained in a *pro se* complaint be held to “less stringent standards than formal pleadings drafted by lawyers”). Accordingly, the court has examined the complaint thoroughly and attempted to discern all of plaintiff’s claims. However, “[t]here is no “duty [on the part] of the trial court . . . to create a claim which [the plaintiff] has not spelled out in his pleading”” *Scogin v. United States*, 33 Fed. Cl.

285, 293 (1995) (quoting *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975) (quoting *Case v. State Farm Mut. Auto. Ins. Co.*, 294 F.2d 676, 678 (5th Cir. 1961))).

B. Subject Matter Jurisdiction under RCFC 12(b)(1)

In rendering a decision on a motion to dismiss for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1), this court must presume all undisputed factual allegations to be true and construe all reasonable inferences in favor of the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *abrogated on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800, 814-15 (1982); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). However, plaintiff bears the burden of establishing subject matter jurisdiction, *Alder Terrace, Inc. v. United States*, 161 F.3d 1372, 1377 (Fed. Cir. 1998) (citing *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936)), and must do so by a preponderance of the evidence, *Reynolds*, 846 F.2d at 748. If jurisdiction is found to be lacking, this court must dismiss the action. RCFC 12(h)(3).

II. Analysis

A. Plaintiff's Claim

Plaintiff's complaint contains only one clear demand for relief, a request for \$150,000 in punitive damages for the actions of two federal employees who, he alleges, interfered with his right to collect employment tax refunds for tax years 1999 and 2000. Compl. at 1, 6. Defendant has also addressed a hypothetical claim, unstated in plaintiff's complaint, that plaintiff "[p]resumably" seeks to recover the \$1796 and \$85.41 employment tax refunds that were requested by plaintiff of the IRS on November 1, 2005. Def.'s Mot. at 1. The court, however, does not see anything to be gained in discussing a claim that plaintiff might have but did not present in his complaint. *See Scogin*, 33 Fed. Cl. at 293 (noting that the trial court has no duty to create claims for *pro se* plaintiffs). The court finds defendant's arguments to be persuasive that this court's jurisdiction would not lie for an employment tax refund claim, had it been presented in the complaint under the facts alleged by plaintiff. However, that type of claim is not before the court.

There are comments in the complaint which also do not rise to the level of

claims. The second sentence of the complaint is one example:

I, Joseph: of the :Fuce:-Family, in the second generation, one of, the private Sovereign Citizens of the United States³ of America, in the jurisdiction of the United States Flag, residing in the State of Pennsylvania, am invoking my First, Ninth and Tenth Amendment rights under the Constitution of the United States of America, in the jurisdiction of the United States Flag.

Compl. at 1. Nowhere in the complaint, however, does plaintiff assert that his rights under the First, Ninth and Tenth Amendments were violated, and none of the facts alleged by plaintiff appear to bear even a distant relationship to the constitutional rights afforded by the amendments invoked by plaintiff.

Similarly, the final sentence of the complaint states that

[f]or the claimant with the Federal Claim No.:
_____ is with the damage by the loss of the love and nurturing of the children and for the freedom for the use of his property for the pain of the body and mind for the loss.

Compl. at 6. Defendant suggests that perhaps plaintiff here alleges tort damages. Def.'s Mot. at 6. Yet no amount of liberal construction by the court can render this sentence into a claim that arises from the facts stated by plaintiff. The court does not discern a tort claim in this sentence or anywhere else in the body of plaintiff's complaint. Even if there were a tort claim in the complaint, this court does not have jurisdiction over tort claims. 28 U.S.C. § 1491(a)(1) (2000).

Thus, the court has before it plaintiff's claim for punitive damages, which is founded on four statutory sources. Plaintiff alleges that two Treasury employees interfered with the mails, in contravention of 18 U.S.C. § 1702 (2000), and took the papers related to his refund claims, in contravention of 18 U.S.C. § 285 (2000). In addition, plaintiff alleges that two Treasury employees deprived him of his rights in violation of 42 U.S.C. § 1983 (2000). Finally, plaintiff complains that two Treasury employees conspired to deprive him of his rights in violation of 42

U.S.C. § 1985(3) (2000). Although plaintiff cites to other sources of legal authority, none appear to be related to the facts alleged by plaintiff or to his claim for punitive damages.²

B. Jurisdictional Inquiry

“Obstruction of correspondence,” the infraction sanctioned by 18 U.S.C. § 1702, is a federal crime. “Taking or using papers relating to claims” deposited with a federal agency is also a federal crime. 18 U.S.C. § 285. This court has no criminal jurisdiction. *Campbell v. United States*, 229 Ct. Cl. 706, 707 (1981). Therefore, this court is powerless to address plaintiff’s allegation that federal employees intercepted mail he addressed to someone else and took his refund claims.

Plaintiff also asserts that two Treasury employees deprived him of his rights. This court lacks jurisdiction to address civil rights violations sanctioned by 42 U.S.C. §§ 1983, 1985(3). *Marlin v. United States*, 63 Fed. Cl. 475, 476 (2005) (citations omitted). Thus, this court cannot address plaintiff’s allegation that he was deprived of his rights to collect a tax refund.

CONCLUSION

Plaintiff’s claim does not fall within the jurisdiction of the court. Accordingly, it is hereby **ORDERED** that defendant’s motion to dismiss for lack of jurisdiction, filed May 12, 2006, is **GRANTED**. The Clerk’s office is directed to **ENTER** judgment for defendant, dismissing the complaint without prejudice. No costs.

s/Lynn J. Bush
LYNN J. BUSH
Judge

^{2/} Plaintiff cites to provisions of the Uniform Commercial Code (UCC) that have no relevance to his dealings with the IRS and the Department of the Treasury; nor do these provisions give rise to jurisdiction in this court. *See Linear Tech. Corp. v. Micrel, Inc.*, 275 F.3d 1040, 1048 (Fed. Cir. 2001) (“Of course, the UCC is a model code—it does not itself have the force of law . . .”). Plaintiff also asserts that he is not a taxpayer as defined by the Internal Revenue Code, an assertion that is irrelevant to his punitive damages claim.