

In the United States Court of Federal Claims

No. 11-262T
(Filed: January 19, 2012)

WILLIAM D. ZACK, *
 *
 Plaintiff, *
 *
 v. *
 *
 THE UNITED STATES, *
 *
 Defendant. *

OPINION AND ORDER

Plaintiff William D. Zack, appearing pro se, seeks a refund of income taxes he paid in various years during the 1980s and 1990s. Defendant moves to dismiss plaintiff’s complaint for lack of jurisdiction, contending that each of plaintiff’s claims is time-barred. For the reasons set forth below, the court grants defendant’s motion.

I. BACKGROUND

Plaintiff, along with a partner, formed and operated several businesses in the late-1970s through the mid-1980s.¹ In 1983, plaintiff and his partner devised a false-invoice scheme with those businesses that provided them income that they did not report on their federal income tax returns. Then, in 1984, plaintiff and his partner began paying bribes to an employee of Ford Motor Company to ensure that Ford Motor Company placed orders with their businesses. On May 23, 1991, plaintiff was convicted of conspiracy to defraud the United States, tax evasion, and filing false tax returns.

On August 11, 1993, the Internal Revenue Service (“IRS”) issued a notice of deficiency to plaintiff, alleging that due to the false-invoice scheme, plaintiff had underreported his income for the 1985 and 1986 tax years. Plaintiff petitioned the United States Tax Court (“Tax Court”) to redetermine the deficiency on May 6, 1994. The Tax Court, in a March 14, 2000 ruling,

¹ The court derives the facts in this section from plaintiff’s complaint; the exhibits attached to plaintiff’s complaint, defendant’s motion to dismiss, and plaintiff’s opposition to the motion to dismiss; and, to fill in some gaps in the record, the decisions in Zack v. Commissioner, 291 F.3d 407, 409-11 (6th Cir. 2002), and Zack v. Commissioner, 79 T.C.M. (CCH) 1649 (2000).

reduced the amount of plaintiff's unreported income for both years by the amount of the bribes paid by plaintiff. On December 26, 2000, based on the Tax Court's ruling, the IRS assessed against plaintiff additional income tax, along with penalties and interest, for both years.

On December 4, 2007, the IRS sent plaintiff another notice of deficiency, indicating that it had calculated a \$9,411 underpayment of taxes for the 2005 tax year. Plaintiff timely challenged this assessment in the Tax Court on February 27, 2008. During those proceedings, the government attempted to introduce exhibits relating to plaintiff's criminal conviction. Plaintiff objected, and the Tax Court ultimately declined to admit them. Subsequently, in a November 24, 2010 decision, the Tax Court, pursuant to the parties' agreement, declared that plaintiff did not overpay his income taxes for the 2005 tax year.

In the meantime, beginning in 1996 and continuing through 2010, plaintiff made multiple attempts to obtain income tax refunds from the IRS for the 1982, 1986, 1987, 1988, 1995, and 1997 tax years. Many of these refund claims related to a purported net operating loss plaintiff sustained in 1988 that resulted from how he reported his income from the false-invoice scheme. The IRS did not grant any of plaintiff's refund claims and, in fact, expressly disallowed almost all of them. Lacking success with the IRS, plaintiff filed the present complaint on April 26, 2011, seeking income tax refunds for the same years.² In the sections that follow, the court describes in greater detail plaintiff's attempts to obtain these refunds.

A. Plaintiff's 1982 Refund Claim

Plaintiff filed his 1982 federal income tax return on April 15, 1983. Subsequently, on his 1985 tax return, which he filed before the extended deadline of August 15, 1986, he claimed an investment credit. He was unable to use all of the credit for the 1985 tax year, and he therefore carried back the unused portion of the credit to the previous three years. Accordingly, on August 15, 1986, plaintiff requested that the IRS issue him a refund of \$6,582 for the 1982 tax year. On September 8, 1986, the IRS sent plaintiff the requested refund.

Subsequently, on November 6, 1996, plaintiff prepared an amended return for the 1982 tax year, seeking a \$9,003 refund based on an increase in the amount of the investment credit he sought to carry back from 1985.³ Plaintiff later determined that the amount of the refund he

² Plaintiff specifically enumerates six claims for relief in his complaint, one each for the 1982, 1986, 1987, 1988, 1995, and 1997 tax years. He also included as an exhibit to his complaint an amended income tax return for the 2007 tax year. Plaintiff does not, however, state a separate claim for relief seeking a refund for the 2007 tax year, which he confirmed in his opposition to defendant's motion to dismiss. The court will not, therefore, construe plaintiff's complaint as containing a refund claim for the 2007 tax year.

³ Neither this claim nor any disposition of this claim is reflected in the official transcript of plaintiff's account for the 1982 tax year maintained by the IRS.

calculated was in error, concluding that the refund due to him was actually \$6,753. Because he had already received a refund of \$6,582, plaintiff only sought a refund of the \$171 balance in an amended return he submitted to the IRS on July 11, 1998. The IRS disallowed plaintiff's claim on October 29, 1998, stating that the return was untimely because it was not filed within three years of its due date. Plaintiff appealed the disallowance to the IRS on November 21, 1998, arguing that because the 1982 refund claim was based on a carryback from the 1985 tax year, the IRS's pending deficiency claim against him for the 1985 tax year meant that an adjustment for the 1982 tax year was permitted. The IRS responded that it was unable to process plaintiff's claim because his case had been litigated in the Tax Court. In a January 20, 1999 letter, plaintiff objected to the IRS's conclusion, noted that his case before the Tax Court remained pending, and averred that, in any event, the Tax Court lacked jurisdiction over his refund claim.

More than ten years later, on April 4, 2010, plaintiff submitted to the IRS another amended return for the 1982 tax year claiming a \$171 refund, asserting that his claim was based on a carryback of his investment credit from 1985. The IRS disallowed plaintiff's claim on June 16, 2010, explaining that plaintiff had not filed his claim within three years of the due date for the tax return establishing the carryback of the credit. Plaintiff appealed the disallowance to the IRS on June 29, 2010, and the IRS denied the appeal on October 4, 2010.

B. Plaintiff's 1986 Refund Claim

Plaintiff filed his 1986 federal income tax return on November 13, 1987, almost a month after the extended deadline of October 15, 1987, on which he carried forward an unused portion of the 1985 investment credit. Plaintiff thereafter sought to amend his return for the 1986 tax year to obtain a refund on multiple occasions. His first amendment, dated August 8, 1996, was allegedly disallowed by the IRS on August 27, 1996.⁴ Plaintiff then prepared another amended return on October 16, 1996, reflecting a carryback from 1988 related to his income from the false-invoice scheme.⁵

Plaintiff submitted a third amended return to the IRS on July 12, 1998, seeking a refund based on, among other things, a net operating loss carryback from 1989 related to his income from the false-invoice scheme.⁶ The IRS disallowed the third refund claim on October 28, 1998,

⁴ Neither this claim nor any disposition of this claim is reflected in the official transcript of plaintiff's account for the 1986 tax year maintained by the IRS, and plaintiff provides no documentary evidence in support of these allegations.

⁵ Neither this claim nor any disposition of this claim is reflected in the official transcript of plaintiff's account for the 1986 tax year maintained by the IRS, and plaintiff provides no documentary evidence that the IRS considered this claim.

⁶ Plaintiff received an extension for the filing of his 1989 federal income tax return to August 15, 1990.

stating that the return was untimely because it was not filed within three years of its due date. Plaintiff appealed the disallowance to the IRS on November 21, 1998, arguing that because there was a pending deficiency claim against him related to the 1986 tax year, he was entitled to seek an adjustment for that year. The IRS responded on January 7, 1999, that it was unable to process plaintiff's claim because his case had been litigated in the Tax Court. In a January 20, 1999 letter, plaintiff objected to the IRS's conclusion, noted that his case before the Tax Court remained pending, and averred that, in any event, the Tax Court lacked jurisdiction over his refund claim.

As mentioned above, the Tax Court issued its ruling related to the 1986 tax year on March 14, 2000. Based upon that ruling, the IRS assessed additional tax against plaintiff on December 26, 2000. However, the IRS cancelled the additional assessment in 2006 due to plaintiff's bankruptcy.

On April 4, 2010, plaintiff again filed an amended return for the 1986 tax year, seeking a refund of \$81,744 based on a net operating loss and an alternative tax net operating loss he sustained in 1989. The IRS disallowed plaintiff's claim on July 12, 2010, explaining that plaintiff had not filed his claim within three years of the due date for the relevant tax return. Plaintiff appealed the disallowance to the IRS on August 5, 2010, and the IRS denied the appeal on October 21, 2010.

C. Plaintiff's 1987 Refund Claim

Plaintiff filed his 1987 federal income tax return on October 17, 1988, after receiving an extension to October 15, 1998, again carrying forward an unused portion of the investment credit from 1985. Plaintiff first sought to amend his 1987 return in July 1998 to obtain a refund based on a carryforward of an investment credit from 1986 and a net operating loss carryback from 1989. The IRS disallowed the claim on October 28, 1998, stating that the return was untimely because it was not filed within three years of its due date. Plaintiff appealed the disallowance to the IRS on November 21, 1998, arguing that because the 1987 refund claim was based on a credit he carried forward from the 1985 tax year, the IRS's pending deficiency claim against him for the 1985 tax year meant that an adjustment for the 1987 tax year was permitted. The IRS responded on January 7, 1999, that it was unable to process plaintiff's claim because his case had been litigated in the Tax Court. In a January 20, 1999 letter, plaintiff objected to the IRS's conclusion, noted that his case before the Tax Court remained pending, and averred that, in any event, the Tax Court lacked jurisdiction over his refund claim.

Eventually, on April 4, 2010, plaintiff filed another amended return for the 1987 tax year, seeking a refund of \$206,780 based on net operating loss and alternative tax net operating loss carrybacks he sustained in 1990.⁷ The IRS disallowed plaintiff's claim on July 12, 2010,

⁷ Plaintiff received an extension for the filing of his 1990 federal income tax return to October 15, 1991.

explaining that plaintiff had not filed his claim within three years of the due date for the relevant tax return. Plaintiff appealed the disallowance to the IRS on August 6, 2010, and the IRS denied the appeal on October 21, 2010.

D. Plaintiff's 1988 Refund Claim

Plaintiff filed his 1988 federal income tax return on November 13, 1989, almost a month after his extended deadline of October 15, 1989, once again carrying forward an unused portion of the investment credit from 1985. He prepared an amended return for the 1998 tax year on October 15, 1996, indicating that he was seeking a refund related to the bribes he paid in 1985 and 1986.⁸

Plaintiff submitted a second amended return to the IRS on July 8, 1998, again seeking a refund related to the bribes he paid. The IRS disallowed the claim on October 28, 1998, stating that the return was untimely because it was not filed within three years of its due date. Plaintiff appealed the disallowance to the IRS on November 21, 1998, arguing that because the 1988 refund claim was based on a credit he carried forward from the 1985 tax year, the IRS's pending deficiency claim against him for the 1985 tax year meant that an adjustment for the 1988 tax year was permitted. The IRS responded on January 7, 1999, that it was unable to process plaintiff's claim because his case had been litigated in the Tax Court. In a January 20, 1999 letter, plaintiff objected to the IRS's conclusion, noted that his case before the Tax Court remained pending, and averred that, in any event, the Tax Court lacked jurisdiction over his refund claim.

Years later, on April 4, 2010, plaintiff filed another amended return for the 1988 tax year, seeking a refund of \$22,463, this time based on alternative tax net operating losses he sustained in 1989 and 1990 and a net operating loss he sustained in 1990, all of which he was carrying forward from 1987. The IRS disallowed plaintiff's claim on July 12, 2010, explaining that plaintiff had not filed his claim within three years of the due date for the relevant tax return. Plaintiff appealed the disallowance to the IRS on August 6, 2010, and the IRS denied the appeal on October 21, 2010.

E. Plaintiff's 1995 Refund Claim

Plaintiff filed his 1995 federal income tax return on October 15, 1996. As he had previously, plaintiff carried forward an unused portion of the 1985 investment credit. As a result

⁸ Neither this claim nor any disposition of this claim is reflected in the official transcript of plaintiff's account for the 1986 tax year maintained by the IRS, and plaintiff provides no documentary evidence that the IRS considered this claim.

of plaintiff's bankruptcy,⁹ the IRS cancelled his tax liability for the 1995 tax year on March 1, 2004. The only payment plaintiff made for the 1995 tax year was \$624 in withholding.

Despite the cancellation of his tax liability, plaintiff submitted an amended return for the 1995 tax year on November 7, 2005, seeking a refund of \$791—the amount of the tax liability shown on his original return—based on a carryforward of his investment tax credit from 1985, as well as a net operating loss and an alternative tax net operating loss he sustained in 1990 and carried forward from 1987 and 1988. The IRS disallowed plaintiff's claim on January 25, 2006, explaining that plaintiff did not file the return by the October 15, 1999 deadline. Plaintiff then submitted another amended return on April 20, 2010, to obtain a refund of the \$624 in taxes withheld in 1995. The IRS has not responded to this most recent claim.

F. Plaintiff's 1997 Refund Claim

Plaintiff filed his 1997 federal income tax return on February 11, 2000. On his return, he again carried forward an unused portion of the investment credit from 1985. Plaintiff sought to amend his return for the 1997 tax year on three occasions. The refund claim in his first amendment, submitted in November 2005, was disallowed by the IRS in January 2006. Plaintiff submitted a second amended return on April 20, 2010, seeking a \$750 refund based on a carryforward of his investment tax credit from 1985, as well as a net operating loss and an alternative tax net operating loss he sustained in 1990 and carried forward from 1987 and 1988. The IRS disallowed plaintiff's claim on August 9, 2010, explaining that plaintiff had not filed his claim within three years of the due date for the relevant tax return. Plaintiff appealed the disallowance to the IRS on August 6, 2010, but has not received a response. Plaintiff subsequently submitted a third amended return to the IRS on August 30, 2010, to which the IRS has not responded.

G. Relief Sought

Plaintiff asserts that the IRS has consistently and improperly denied his claims and rejected his appeals, removed his other options for redress, and used his criminal conviction against him. By doing so, plaintiff claims, the IRS has violated the applicable statutes and regulations and deprived him of his property under the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution. Thus, in accordance with the above allegations, plaintiff seeks refunds of \$171, \$81,744, \$206,780, \$22,463, \$624, and \$750—plus interest and costs—for the 1982, 1986, 1987, 1988, 1995, and 1997 tax years, respectively.

⁹ This bankruptcy is different from the bankruptcy that affected plaintiff's 1986 income taxes.

II. DISCUSSION

A. Rule 12(b)(1) Motions to Dismiss

Defendant moves to dismiss each of plaintiff's claims for lack of jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims, contending that they are all time-barred. In ruling on a motion to dismiss, the court generally assumes that the allegations in the complaint are true and construes those allegations in the plaintiff's favor. Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995). A pro se plaintiff's complaint, "'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers'" Hughes v. Rowe, 449 U.S. 5, 10 n.7 (1980) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). However, a pro se plaintiff is not excused from meeting basic jurisdictional requirements. See Henke, 60 F.3d at 799 ("The fact that [the plaintiff] acted pro se in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures, if such there be."). In other words, a pro se plaintiff is not excused from his or her burden of proving, by a preponderance of the evidence, that the court possesses jurisdiction. See McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988).

Accordingly, if the defendant challenges the factual basis of the court's jurisdiction, contested allegations in the complaint are not controlling. Cedars-Sinai Med. Ctr. v. Watkins, 11 F.3d 1573, 1583 (Fed. Cir. 1993). The court may therefore look to evidence outside of the pleadings to determine the existence of jurisdiction. Land v. Dollar, 330 U.S. 731, 735 & n.4 (1974). If the court finds that it lacks jurisdiction over a claim, the court must dismiss it. Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.").

B. Subject Matter Jurisdiction

The ability of the United States Court of Federal Claims ("Court of Federal Claims") to hear and decide suits against the United States is limited. "The United States, as sovereign, is immune from suit save as it consents to be sued." United States v. Sherwood, 312 U.S. 584, 586 (1941). The waiver of immunity "cannot be implied but must be unequivocally expressed." United States v. King, 395 U.S. 1, 4 (1969).

The Tucker Act, the principal statute governing the jurisdiction of this court, waives sovereign immunity for claims against the United States, not sounding in tort, that are founded upon the Constitution, a federal statute or regulation, or an express or implied contract with the United States. 28 U.S.C. § 1491(a)(1) (2006). However, the Tucker Act is merely a jurisdictional statute and "does not create any substantive right enforceable against the United States for money damages." United States v. Testan, 424 U.S. 392, 398 (1976). Instead, the

substantive right must appear in another source of law, such as a “money-mandating constitutional provision, statute or regulation that has been violated, or an express or implied contract with the United States.” Loveladies Harbor, Inc. v. United States, 27 F.3d 1545, 1554 (Fed. Cir. 1994) (en banc).

C. The Court Cannot Entertain Plaintiff’s Due Process Claims

Given the allegations in plaintiff’s complaint, the court must first address the nature of plaintiff’s lawsuit. As noted above, plaintiff contends that the IRS violated his due process rights under the Fifth and Fourteenth Amendments of the United States Constitution. The Court of Federal Claims, however, lacks the jurisdiction to entertain claims founded on these clauses because neither clause is money-mandating. See LeBlanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (“[T]he Due Process Clauses of the Fifth and Fourteenth Amendments . . . [are not] a sufficient basis for jurisdiction because they do not mandate payment of money by the government.”). Thus, the court limits its consideration of plaintiff’s complaint to his tax refund claims.

D. Jurisdictional Limitations in Tax Refund Suits

Congress has explicitly waived sovereign immunity for tax refund suits. 26 U.S.C. § 7422 (2006); 28 U.S.C. § 1346(a)(1); Chi. Milwaukee Corp. v. United States, 40 F.3d 373, 374 (Fed. Cir. 1994). The jurisdiction of the Court of Federal Claims to entertain tax refund suits is limited to those situations where the taxpayer has complied with the provisions of the Internal Revenue Code (“IRC”). See 26 U.S.C. § 7422(a); United States v. Clintwood Elkhorn Mining Co., 553 U.S. 1, 4 (2008); Chi. Milwaukee Corp., 40 F.3d at 374. In its motion, defendant contends that plaintiff did not comply with various sections of the IRC, thereby depriving the Court of Federal Claims of jurisdiction.¹⁰

Under the IRC, prior to filing suit for a tax refund, a taxpayer must file a timely claim for refund with the IRS. 26 U.S.C. § 7422(a). To be timely, the claim for refund must be filed with the IRS within either three years of the filing of the tax return or within two years of the date of tax payment, whichever period ends later. Id. § 6511(a). If the claim for refund relates to the carryback of a net operating loss or an investment credit, however, it must be filed within three years of the due date for the filing of the return—which includes any extensions of time—for the year of the net operating loss or unused credit. Id. § 6511(d)(2)(A), (4)(A). Once a taxpayer submits a refund claim to the IRS, the taxpayer must wait at least six months before filing a

¹⁰ The court must apply the provisions of the IRC, *i.e.*, Title 26 of the United States Code, that were in effect during the tax years at issue. See, *e.g.*, United States v. Hill, 506 U.S. 546, 549 n.1 (1993) (“All references to the Internal Revenue Code and related Treasury Regulations are to those that applied during the tax years at issue.”). In this case, the relevant statutory provisions are the same for each year at issue. The court therefore omits the year of the IRC provisions from its citations.

lawsuit, unless the claim is denied before the end of the six-month period. Id. § 6532(a)(1). Additionally, the taxpayer must file the lawsuit within two years of the mailing of the notice of disallowance of the claim unless the taxpayer and the IRS agree in writing to extend the deadline. Id. § 6532(a)(1)-(2). A taxpayer may not obtain a refund for a particular tax year—either through the submission of a refund claim to the IRS or the filing of a lawsuit—if the IRS has provided a taxpayer with a notice of deficiency for that tax year and the taxpayer timely challenged the deficiency in the Tax Court. Id. § 6512(a).

E. Plaintiff Cannot Pursue His 1986 Refund Claim Because the 1986 Tax Year Was Litigated Before the Tax Court

As an initial matter, the court lacks jurisdiction over plaintiff’s 1986 refund claim because plaintiff litigated the 1986 tax year before the Tax Court. The IRC clearly precludes further litigation of a refund claim once a petition regarding the same tax year has been filed by the taxpayer in the Tax Court. See id. (indicating that once a taxpayer files a petition in the Tax Court, “no credit or refund of income tax for the same taxable year . . . shall be allowed”); see also Erickson v. United States, 309 F.2d 760, 767 & n.7 (Ct. Cl. 1962) (“[T]he Tax Court’s jurisdiction, once it attaches, extends to the entire subject of the correct tax for the particular year.”). This is the case even if the refund claim is based on events that postdate the Tax Court proceedings. See Solitron Devices, Inc. v. United States, 862 F.2d 846, 849 (11th Cir. 1989) (noting that a taxpayer is barred from further litigation even when “the issue that the taxpayer desires to raise could not have been litigated because it depend[ed] upon facts that occurred subsequent to the Tax Court’s decision”).

Here, the issue that plaintiff seeks to litigate is not based on any new facts or events. Rather, plaintiff’s 1986 refund claim before this court, like the refund claims he submitted to the IRS in 1996, 1998, and 2010, relates to a purported net operating loss he sustained as a result of how he was required to report the income from the false-invoice scheme. The income resulting from the false-invoice scheme was the precise subject of the proceedings before the Tax Court. See Zack, 79 T.C.M. (CCH) at 1649. Thus, there is no reason why plaintiff could not have raised the contentions he included in these refund claims during the Tax Court proceedings, especially given the fact that he submitted two of his refund claims to the IRS while his petition was before the Tax Court. See Erickson, 309 F.2d at 768 (noting that the Tax Court’s decision relating to the 1942 tax year “bars further litigation not only on those aspects of the 1942 tax which were actually raised but also on the issues which could have been presented”). Accordingly, even if the court could entertain refund claims based on events occurring after a petition had been filed in the Tax Court concerning the same tax year, plaintiff has not demonstrated that his current refund claim has a new factual basis.

F. Plaintiff Did Not Timely Submit His Refund Claims to the IRS

More generally, the court lacks jurisdiction to entertain all of plaintiff’s refund claims because plaintiff did not timely submit his refund claims to the IRS pursuant to 26 U.S.C.

§ 6511. Under section 6511, plaintiff had three years from the time he filed his income tax return for the relevant taxable year or, if the refund claim pertained to an investment credit or net operating loss sustained in another year, three years from the due date of his income tax return for that year, to submit a refund claim.¹¹ The court must strictly construe these deadlines and may not create any equitable exceptions. See generally United States v. Brockamp, 519 U.S. 347 (1997) (holding that section 6511 contains explicit time limits and that those time limits may not be equitably tolled).

Applying the requirements of section 6511 to this case, plaintiff's refund claim for the 1982 tax year, which was based on an investment credit carried back from the 1985 tax year, was due no later than August 15, 1989. Plaintiff, however, did not submit a refund claim to the IRS until November 6, 1996. Plaintiff's refund claim for the 1986 tax year, which was based on a net operating loss from 1988 or 1989, was due no later than August 15, 1993. He did not, however, submit a refund claim to the IRS until October 16, 1996. Plaintiff's refund claim for the 1987 tax year, which was based on a net operating loss from 1989 or 1990, was due no later than October 15, 1994. Plaintiff, however, did not submit a refund claim to the IRS until July 1998. Plaintiff's refund claim for the 1988 tax year was due no later than November 13, 1992, to the extent it related to the bribes he received, or no later than October 15, 1994, to the extent it related to a net operating loss from 1987, 1989, or 1990. He did not, however, submit a refund claim to the IRS until July 8, 1998. Plaintiff's refund claim for the 1995 tax year, which was based on a net operating loss from earlier years, was due no later than October 15, 1999. Plaintiff, however, did not submit a refund claim to the IRS until November 7, 2005. Plaintiff's refund claim for the 1997 tax year, which was based on a net operating loss from earlier years, was due no later than February 11, 2003. He did not, however, submit a refund claim to the IRS until November 2005. In sum, plaintiff did not submit a timely request for refund to the IRS for any of the tax years at issue.

G. Plaintiff Did Not Timely File His Complaint

In addition to not submitting his refund claims to the IRS in a timely manner, plaintiff's lawsuit in this court is untimely. Absent a written agreement to the contrary, the statute of limitations for challenging the IRS's denial of a refund claim is two years from the date the IRS mailed the notice of disallowance of the claim. 26 U.S.C. § 6532(a)(1). As with section 6511, the court must strictly construe this deadline and may not create any equitable exceptions. See generally RHI Holdings, Inc. v. United States, 142 F.3d 1459 (Fed. Cir. 1998) (holding that

¹¹ All of plaintiff's payments to the IRS for the 1986, 1987, 1988, 1995, and 1997 tax years were within one year of the filing of his original return for those years. Thus, the two-year deadline described in 26 U.S.C. § 6511(a) does not apply to those years. And, although plaintiff made a payment for the 1982 tax year in June 1985, his deadline for submitting a refund claim to the IRS for that year is based upon the return he filed for the 1985 tax year. Thus, the two-year deadline described in section 6511 is inapplicable to the 1982 tax year as well.

section 6532(a) “does not contain an implied ‘equitable’ exception” and must be strictly applied). The IRS sent plaintiff initial notices of disallowance for the 1982, 1986, 1987, 1988, and 1995 tax years on October 29, 1998, August 27, 1996, October 28, 1998, October 28, 1998, and January 25, 2006, respectively. The IRS also sent plaintiff an initial notice of disallowance for the 1997 tax year in January 2006. Plaintiff, however, did not file his complaint in this court until April 26, 2011, at least five years too late.

The fact that plaintiff submitted a new refund claim to the IRS for each of these tax years in April 2010 is of no import. These most recent claims merely reiterate his prior claims and do not act to amend his claims, perfect his claims, or otherwise extend the statute of limitations for filing a complaint based on those claims. See Computervision Corp. v. United States, 445 F.3d 1355, 1371 (Fed. Cir. 2006) (“[A]n amendment is ineffective if filed after the original claim has either been allowed or disallowed by the IRS.”); Allstate Ins. Co. v. United States, 550 F.2d 629, 633 (Ct. Cl. 1977) (“It is a rule of long standing that once a refund claim has been disallowed, it is not subject to amendment. Similarly, repetition of the identical grounds set forth in the disallowed claim in a new and subsequent refund claim is a nullity.” (citations omitted)); Newport Indus., Inc. v. United States, 60 F. Supp. 229, 232 (Ct. Cl. 1945) (“A refund claim, informal or formal, cannot be amended or perfected as a matter of right after it has been denied or rejected, and after the period of limitation has expired.”). Nor does a letter from the IRS describing plaintiff’s appeal rights toll the statute of limitations. See Marcinkowsky v. United States, 206 F.3d 1419, 1421-22 (Fed. Cir. 2000) (holding that “the time for filing suit was not extended by the 1998 IRS statement that [the taxpayer] could file suit if he ‘wished to appeal our decision,’ and that this statement did not start a new two-year period”); see also Estate of Orlando v. United States, 94 Fed. Cl. 286, 292 (2010) (holding that a legally incorrect statement in an IRS letter concerning the time for filing suit does not toll the statute of limitations).

H. Plaintiff’s Remaining Contentions Lack Merit

In an effort to resuscitate his untimely refund claims, plaintiff contends that it was not until the Tax Court’s November 24, 2010 decision that he could correctly determine the amount of tax he owed for the tax years at issue. He also alleges that his success in the Tax Court in 2010 demonstrated that the government acted fraudulently in the earlier criminal and Tax Court proceedings. Neither argument carries any weight. The Tax Court’s 2010 decision concerned only the 2005 tax year and therefore had no effect on the deadlines imposed by 26 U.S.C. § 6511 and 26 U.S.C. § 6532(a) for the tax years at issue here. See 26 U.S.C. § 6512(a) (providing that Tax Court proceedings affect only the tax year at issue in those proceedings); see also Dalm v. United States, 494 U.S. 596, 609 n.7 (1990) (“That a taxpayer does not learn until after the limitations period has run that a tax was paid in error, and that he or she has a ground upon which to claim a refund, does not operate to lift the statutory bar.”). And, even if plaintiff had provided evidence of fraud by the government, which he has not, such fraud would not be remediable in the Court of Federal Claims because it is a claim sounding in tort. See, e.g., Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997) (holding that because the plaintiffs’ fraudulent assessment and fraudulent takings claims sounded in tort, the court lacked jurisdiction); O’Leary

v. United States, 77 Ct. Cl. 635, 638 (1933) (holding that the court lacked jurisdiction to entertain a claim that the plaintiff’s resignation was “procured through misrepresentations and fraud practiced upon him by officers of the Government”); Sumter v. United States, 61 Fed. Cl. 517, 526 (2004) (“This court lacks jurisdiction over the plaintiff’s . . . ‘extrinsic’ and ‘intrinsic’ fraud claims, which challenge the actions of IRS officials.”).

Plaintiff also contends that he is entitled to maintain this lawsuit because he is seeking equitable recoupment of money wrongfully withheld from him by the United States. Under the doctrine of equitable recoupment, “a party litigating a tax claim in a timely proceeding may, in that proceeding, seek recoupment of a related, and inconsistent, but now time-barred tax claim relating to the same transaction.” Dalm, 494 U.S. at 608 (citing Bull v. United States, 295 U.S. 247 (1935)). In other words, a taxpayer may only seek equitable recoupment of erroneously paid income taxes in a timely filed lawsuit. Not one of plaintiff’s claims in this lawsuit, however, was timely asserted. Accordingly, plaintiff is unable to obtain equitable recoupment of income taxes that he previously paid.

Plaintiff further argues that his refund claims are timely because the IRS knew or should have known that his original income tax returns were incomplete when filed. The IRS, however, has no legal duty to inform a taxpayer that a tax return is incomplete or otherwise defective. See Sumner v. United States, 71 Fed. Cl. 627, 629 (2006) (“[T]he IRS has no legal duty to discover overpayments and report them to taxpayers—despite its extensive databases and access to information.”); cf. Columbia Gas Sys., Inc. v. United States, 70 F.3d 1244, 1246 (Fed. Cir. 1995) (noting that a processible tax return is one that is “(1) filed on a permitted form; (2) filed in proper form with the taxpayer’s name, address, identifying number, and the required signature; and (3) filed with sufficient information (whether on the return or required attachments) to permit the mathematical verification of tax liability on the return”); Deutsche Bank AG v. United States, 95 Fed. Cl. 423, 436 (2010) (“It is the data that is actually submitted by the taxpayer with its return—and not all information available to the IRS from some other source—that must enable the IRS to calculate the tax liability shown on the return . . .”). Indeed, the tax system in the United States relies on taxpayers self-assessing and self-reporting the taxes they owe to the government; it is a system based on voluntary compliance. See United States v. Bisceglia, 420 U.S. 141, 145 (1975). In such a system, “the Government depends upon the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability.” Id. Accordingly, plaintiff’s attempt to shift the burden to the IRS to scrutinize his tax returns for completeness is improper.

III. CONCLUSION

“The very purpose of statutes of limitations in the tax context is to bar the assertion of a refund claim after a certain period of time has passed, without regard to whether the claim would otherwise be meritorious.” Dalm, 494 U.S. at 609 n.7. Plaintiff has waited too long to pursue his refund claims for the tax years at issue. Thus, for the reasons set forth above, the court

GRANTS defendant's motion to dismiss for lack of jurisdiction and **DISMISSES** plaintiff's complaint without prejudice. No costs. The clerk shall enter judgment accordingly.

IT IS SO ORDERED.

MARGARET M. SWEENEY
Judge