

In the United States Court of Federal Claims

GEORGE OTTO THURMAN

Plaintiff,

v.

THE UNITED STATES,

Defendant.

*
*
*
*
*
*
*
*
*
*

Case No. 04-1532T

Filed: July 20, 2005

Senior Judge Smith

ORDER

Defendant filed a Motion to Dismiss pursuant to Rule of the United States Court of Federal Claims (RCFC) 12(b)(1), arguing that this Court lacks subject-matter jurisdiction to hear Plaintiff's complaint. In response, Plaintiff filed an Objection to the Motion to Dismiss and an Amended Motion for Summary Judgment pursuant to RCFC 56(c). Defendant filed a Reply to Plaintiff's Motion for Summary Judgment and in Support of its Motion to Dismiss.¹ Because this Court finds that it lacks subject-matter jurisdiction, Defendant's Motion to Dismiss is **GRANTED**.

DISCUSSION

The Tucker Act grants this Court the jurisdiction to hear "any claim against the United States ... not sounding in tort." 28 U.S.C. § 1491(a)(1). The Tucker Act vests jurisdiction in this Court where the plaintiff identifies an accompanying substantive claim that "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." *United States v. Mitchell*, 463 U.S. 206, 216 (1983), (citing *United States v. Testan*, 424 U.S. 392, 400 (1976)). The Tucker Act does not itself create a cause of action. A plaintiff must identify a money-mandating statute which is "reasonably amenable to the reading that it mandates a right of recovery in damages." *Fisher v. United States*, 402 F.3d 1167, 1174 (Fed. Cir. 2005) (citing *United States v. White Mountain*

¹ Plaintiff has also filed three inapposite motions: a Motion to Sever, an Objection to Wrongful Conversion of Claim and a Motion to Strike Notice of Appearance, none of which this Court need entertain.

Apache Tribe, 537 U.S. 465, 472 (2003)). In his complaint, Plaintiff makes a smattering of substantive claims: a series of tort claims, a series of criminal claims, an unlawful taking, and a tax refund claim.

While Plaintiff alleges seizure, trespass, and conversion of his “future benefits” of Social Security, the Tucker Act grants the Court of Federal Claims jurisdiction in claims against the Government not sounding in tort. *Compl.* 1, 5. Because trespass and conversion are tort claims, §§ 4 and 6 of Count I and § 7 of both Counts II and III of Plaintiff’s Complaint are outside the scope of this Court’s jurisdiction.

Plaintiff goes on to claim a violation of the Fifth Amendment’s Takings clause. U.S. CONST. Amend. V, § 1. The collection and assessment of taxes does not constitute a taking under the Fifth Amendment. *See United States v. Sperry Co.*, 493 U.S. 52 (1989); *Commw. Edison Co. v. United States*, 271 F.3d 1327, 1339 (Fed. Cir. 2001) (stating “regulatory actions requiring the payment of money are not takings”). Regulations requiring the payment of money are not per se takings under the meaning of the Fifth Amendment. Therefore § 5 of Count I and § 6 of Counts II and III do not give rise to this Court’s subject-matter jurisdiction.

By invoking the tax code, 26 U.S.C. § 7214 (1976), 18 U.S.C. § 241 (1996), 18 U.S.C. § 242 (1996), 18 U.S.C. § 1341 (2002) as authority for recovering damages from the Government, Plaintiff colorably alleges he is entitled to a tax refund. Plaintiff alleges that the Government violated the Internal Revenue Code² by denying him social security benefits from March to May of 2000, from July 2002 to July 2003, and from October 2003 to the present. Sections 241, 242, and 1341 are all portions of the federal criminal code. 26 U.S.C. § 7214 is a criminal statute under the Internal Revenue Code. As the Federal Circuit has explained in *Joshua*, the Court of Federal Claims will not adjudicate claims brought under a federal criminal statute. *Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994). Plaintiff characterizes his losses as a levy imposed by the IRS on his Social Security benefits. “My Social Security checks ... are being sent to the IRS.” *Pl. Ex. A*. While Plaintiff’s complaint does not clearly state the origin and purpose of the alleged levy, it is clear the Plaintiff’s claims are for lost Social Security benefits. *Compl.* 1. This Court does not hear claims for social security benefits, even when the plaintiff alleges entitlement to relief under the U.S. Constitution. *Marcus v. United States*, 909 F.2d 1470, 1471 (Fed. Cir. 1990) (rejecting a plaintiff’s claims for Social Security benefits because the Claims Court lacked subject-matter jurisdiction under the Tucker Act).

The Court of Federal Claims “is mindful that pleadings drafted by *pro se* plaintiffs are held to ‘less stringent standards than formal pleadings drafted by lawyers,’” and accordingly, such pleadings by

² Plaintiff has disputed the labeling of his claims as “tax claims.” *Pl. Br.* 4-5 (stating the Internal Revenue Code is a “giant hoax perpetrated upon the People [sic] by IRS ‘agents’”). This is in conflict with Plaintiff’s own “Exhibit A,” which characterizes the Government’s actions as a levy. *Pl. Ex. A*.

pro se plaintiffs are construed liberally. *McSheffery v. United States*, 58 Fed. Cl. 21, 25 (2003) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). Cast in its best light, Plaintiff's claims are for a tax refund.³ The Internal Revenue Code imposes a statute of limitations upon the period in which a claim for a refund may be filed, either within three years from the filing of the return or two years from when the tax was paid, whichever is longer. 26 U.S.C. § 6511 (2001); *VanCanagan v. U.S.*, 231 F.3d 1349, 1351 (Fed. Cir. 2000); *Lovett v. U.S.*, 81 F.3d 143, 145 Fed. Cir. 1996) (noting a potential plaintiff's lack of knowledge of an error in his favor does eliminate the statute of limitations). Given the statute of limitations, even if the Court were to characterize Plaintiff's claims as for a viable tax refund, those claims for the period between March and May of 2000 are barred by the statute of limitations.

Because Plaintiff's tort and criminal claims fall outside this Court's subject-matter jurisdiction and the regulatory payment of money does not give rise to a Fifth Amendment claim, and social security benefits are not a tax refund within this Court's jurisdiction, Plaintiff's Complaint must be dismissed. In light of the foregoing reasons, the Court **GRANTS** Defendant's Motion to Dismiss and **DIRECTS** the Clerk to **DISMISS** Plaintiff's complaint **WITHOUT PREJUDICE**.

It is so ORDERED.

LOREN A. SMITH
Senior Judge

³ If the Court construes Plaintiff's complaint as a tax refund, this Court's subject-matter jurisdiction would ripen only when Plaintiff has exhausted his administrative remedies. 26 U.S.C. § 7422 (1998); *U.S. v. Felt & Tarrant Mfg. Co.*, 283 U.S. 269, 272 (1931) (establishing the principle of first filing a refund claim with the IRS and that new grounds for a claim could not be brought for the first time in a court filing); *Stelco Holding Co. V. U.S.*, 44 Fed. Cl. 703, 706 (Fed. Cl. 1999). Accordingly, the Court does not have jurisdiction to hear Plaintiff's tax refund claims until he has exhausted all administrative remedies available to him.