

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MARK LOUIS SANDERS,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1032

Appeal from the United States Court of Federal Claims
in No. 1:19-cv-01138-EJD, Senior Judge Edward J.
Damich.

Decided: April 7, 2020

MARK LOUIS SANDERS, Trafford, PA, pro se.

RICHARD L. PARKER, Tax Division, United States De-
partment of Justice, Washington, DC, for defendant-appel-
lee. Also represented by BRUCE R. ELLISEN, RICHARD E.
ZUCKERMAN.

Before PROST, *Chief Judge*, DYK and O'MALLEY, *Circuit
Judges.*

APPENDIX A

PER CURIAM.

Mark Louis Sanders appeals an order from the Court of Federal Claims (“Claims Court”) dismissing his complaint. We *affirm*.

BACKGROUND

On August 5, 2019, Sanders filed a complaint in the Claims Court alleging that the United States had imposed taxes on him without jurisdiction. On September 10, 2019, the Claims Court, interpreting Sanders’ complaint as a tax refund suit, dismissed Sanders’ complaint for failing to allege facts necessary to establish the Claims Court’s tax refund jurisdiction. Sanders filed this timely appeal. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

DISCUSSION

“We review the Claims Court’s decision to dismiss for lack of jurisdiction *de novo*.” *Campbell v. United States*, 932 F.3d 1331, 1336 (Fed. Cir. 2019). “We may affirm the [Claims Court’s] dismissal on any ground supported by the record.” *Wyandot Nation v. United States*, 858 F.3d 1392, 1397 (Fed. Cir. 2017).

The Claims Court “can take cognizance only of those [claims] which by the terms of some act of Congress are committed to it.” *Hercules Inc. v. United States*, 516 U.S. 417, 423 (1996) (alteration in original) (quoting *Thurston v. United States*, 232 U.S. 469, 475 (1914)). On appeal, Sanders argues that this is not a tax suit. However, Sanders points to no other statute that would confer jurisdiction to the Claims Court over his action.

There is no jurisdiction over this action as a tax refund suit. Under 28 U.S.C. § 1346(a)(1), “[a] taxpayer seeking a refund of taxes erroneously or unlawfully assessed or collected may bring an action against the Government either in United States district court or in the United States Court of Federal Claims.” *United States v. Clintwood*

Elkhorn Mining Co., 553 U.S. 1, 4 (2008). However, to bring a suit for illegally collected taxes, the taxpayer seeking a refund must “comply with tax refund procedures set forth in the [Internal Revenue] Code.” *Id.* “These principles [also] are fully applicable to claims of unconstitutional taxation.” *Id.* at 9.

On this record, we see no error in the district court’s finding that Sanders has not alleged “any evidence that he has pre-paid the principal tax deficiency—the first prerequisite to tax-refund jurisdiction.” *Sanders v. United States*, 145 Fed. Cl. 37, 38 (2019) (citing *Shore v. United States*, 9 F.3d 1524, 1527 (Fed. Cir. 1993)).

The Claims Court correctly found that “Sanders has not established tax refund jurisdiction, or any other basis for his suit.” *Id.* We conclude that the Claims Court’s dismissal of Sanders’ complaint must be

AFFIRMED

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JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

April 7, 2020

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

In the United States Court of Federal Claims

No. 19-1138T

(Filed: September 10, 2019)

MARK LOUIS SANDERS,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER OF DISMISSAL

On August 5, 2019, Plaintiff, Mark Louis Sanders, acting *pro se*, filed a Complaint with this Court alleging that the Defendant, the United States, imposed taxes on him without jurisdiction between years 1977 and 2018.¹ Compl., ECF No. 1. In support, Plaintiff attached an Order of Dismissal for Lack of Jurisdiction from the United States Tax Court.² See Compl., Ex. A.

Under the Tucker Act, 28 U.S.C. § 1491, the Court of Federal Claims has jurisdiction over tax refund suits if certain prerequisites are met.³ See *United States v. Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 4 (2008). First, a plaintiff must satisfy the full payment rule, which requires that the principal tax deficiency be paid in full. See *Shore v. United States*, 9 F.3d 1524, 1526-27 (Fed. Cir. 1993); see also *Flora v. United States*, 357 U.S. 63, 68 (1958). Second, the plaintiff must timely file a tax refund claim with the IRS. See 26 U.S.C. § 7422(a) (“[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 . . . until a claim for refund or

¹ This Complaint is part of a recent trend of similar cases filed by individuals challenging the jurisdiction of the IRS based, in part, on petitions previously dismissed by the U.S. Tax Court. The Court of Federal Claims has received twenty similar complaints from *pro se* plaintiffs since November 2018.

² In addition, Plaintiff filed an application to proceed *in forma pauperis*, which the Court denied on August 23, 2019. On August 29, 2019, Plaintiff tendered the requisite \$400 filing fee.

³ The jurisdiction of the Court of Federal Claims under the Internal Revenue Code is generally limited to the adjudication of tax refund suits. *Zolman v. United States*, No. 15-1116T, 2015 WL 7266624, at *1 (Fed. Cl. Nov. 12, 2015).

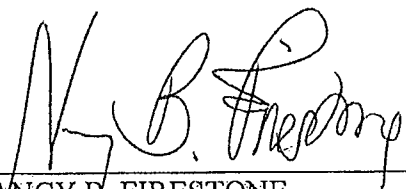
credit has been duly filed with the Secretary . . ."). Third, the plaintiff must provide the amount, date, and place of each payment to be refunded, as well as a copy of the refund claim when filing suit in the Court of Federal Claims. RCFC 9(m). Unless a plaintiff satisfies these prerequisites, the Court of Federal Claims lacks jurisdiction to hear a tax refund suit.

Although a *pro se* plaintiff's pleadings are generally held to "less stringent standards" than those of a professional lawyer, *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (requiring that allegations contained in a *pro se* complaint be held to "less stringent standards than formal pleadings drafted by lawyers"), the Court cannot extend this leniency to relieve plaintiffs of their jurisdictional burden. *Kelley v. Sec'y, U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987). Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court is required to dismiss a case if at any time it determines that the action or appeal is "frivolous or malicious" or "fails to state a claim on which relief may be granted."

In this case, Mr. Sanders' Complaint is so irreparably deficient that it fails to state a claim upon which relief may be granted. Specifically, Mr. Sanders alleges that the United States imposed taxes on him without jurisdiction but fails to provide any evidence that he has pre-paid the principal tax deficiency—the first prerequisite to tax-refund jurisdiction. *See generally*, Compl. Instead, Mr. Sanders attached an Order of Dismissal for Lack of Jurisdiction from the United States Tax Court, in which the Tax Court dismissed Mr. Sanders' petition for failing to establish the jurisdictional prerequisites for bringing a claim in that Court. *See Compl., Exs. A & B*. Such a dismissal cannot serve as the basis for a claim in this Court. As Mr. Sanders has not established tax refund jurisdiction, or any other basis for his suit, Mr. Sanders has failed to state a claim upon which relief may be granted.

Accordingly, Plaintiff's case is hereby **DISMISSED**. The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.



NANCY B. FIRESTONE
Senior Judge
For
EDWARD J. DAMICH
Senior Judge

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MARK LOUIS SANDERS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 6302-18.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This case is before the Court on respondent's Motion To Dismiss for Lack of Jurisdiction and To Impose a Penalty under I.R.C. section 6673, filed May 21, 2018, on the grounds that: (1) no notice of deficiency was issued to petitioner for tax years 1977 through 2018; (3) no notice of determination concerning collection action was issued to petitioner for tax years 1977 through 2018; and (4) respondent has not made any other determination with respect to tax years 1977 through 2018 that would confer jurisdiction on the Court. In his motion, respondent requests that the Court impose an I.R.C. section 6673 penalty. That section authorizes the Court to require a taxpayer to pay to the United States a penalty not in excess of \$25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the position of the taxpayer in such proceeding is frivolous or groundless.

Although the Court directed petitioner to file an objection, if any, to respondent's motion to dismiss, petitioner failed to do so.

Taking into account statements made in the petition and for reasons set forth in respondent's above-mentioned motion, it is

ORDERED that so much of respondent's motion that seeks dismissal of the case is granted; in all other respects respondent's motion is denied. It is further

SERVED Oct 22 2018

APPENDIX C

CERTIFIED TRUE COPY
STEPHANIE A. SERVOSS, CLERK

BY:  DEPUTY CLERK

ORDERED that with respect to each year placed in issue in the petition, this case is dismissed for lack of jurisdiction upon the ground stated in respondent's motion.

Although an I.R.C. section 6673 penalty will not be imposed here, petitioner is admonished that the Court will consider imposing such a penalty in future cases commenced by petitioner seeking similar relief under similar circumstances.



Maurice B. Foley
Chief Judge

ENTERED: **OCT 22 2018**