



order recognizing that Plaintiff's 1989 tax liability is satisfied by his overpayment in 1986 and refund of the excess funds paid.

## II. JURISDICTION

### A. Actions in Mandamus.

The federal courts have held that “the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.” Lawrence v. United States, 631 F.Supp. 631, 638 (E.D. Pa. 1982)(citing Allied Chemical Corp. v. Daiflon Inc., 449 U.S. 33, 34 (1980)). The purpose underlying an action in mandamus is to provide the district courts with the authority “to issue appropriate corrective orders where federal officials are not acting within the zone of their permissible discretion; the writ will issue only where the federal officials are abusing their discretion or acting contrary to law.” Id. (quoting Jeno's v. Commissioner of Patents and Trademarks, 498 F.Supp. 472, 476 (D.Minn. 1983)). Generally, in order to properly plead a complaint in mandamus, “it is essential that the plaintiff allege and show that the government owes him the performance of a legal duty ‘so plainly prescribed as to be free from doubt.’” Naporano Metal and Iron Co. v. United States, 529 F.2d 537, 542 (3rd Cir. 1976)(quoting Richardson v. United States, 465 F.2d 844, 849 (3rd Cir. 1972)).

In the current matter, a significant question of fact is at issue; specifically, whether Plaintiff in fact paid his taxes for the year of 1986 thereby creating an overpayment and a right to a refund. Or, in the alternative, as argued by Defendant, no refund is due as no tax was paid. This Court finds that Plaintiff has failed to show that Defendant has a duty to pay a refund under the settlement agreement that is so “plainly prescribed as to be free from doubt.” Accordingly, this Court finds that the current matter can not proceed as an action in mandamus.

**B. Contract Claims with the United States as the Defendant.**

As both parties admit to entering into settlement agreement following the 1991 audit, and it is the terms and language of this settlement agreement which form the basis of the instant dispute, it is the view of this Court that the current matter is properly an action in contract. Accordingly, this Court shall analyze whether it may exercise jurisdiction in the instant matter.

The Tucker Act sets forth the jurisdiction of the United States Court of Federal Claims with respect to claims against the United States. Specifically, the Tucker Act provides as follows:

The United States Court of Federal Claims 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. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

28 U.S.C. § 1491(a)(1) (West 1994 & Supp. 2004)(emphasis added).

With regard to the jurisdiction of this Court when the United States is a defendant, the Little Tucker Act provides as follows:

- (a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims of:
- (2) **Any other civil action or claim against the United States, not exceeding \$10,000 in amount, 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 damages or unliquidated damages in cases not sounding in tort, except that the district court shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages

in cases not sounded in tort which are subject to section 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

28 U.S.C. § 1346(a)(2) (West 1993 & Supp. 2004)(emphasis added). Courts have routinely interpreted the preceding statutory provisions as granting federal district courts concurrent jurisdiction to that of the Court of Federal Claims only for claims under \$10,000; the Court of Federal Claims retains exclusive jurisdiction for claims over \$10,000. Rodriguez v. FBI, 876 F.Supp. 706, 709 (E.D.Pa. 1995)(citing Dia Navigation Co. v. Pomeroy, 34 f.3d 1255, 1267 (3d Cir. 1994); Hahn v. United States, 757 F.2d 581, 586 (3d Cir. 1985) (“It is uniformly held that, for claim exceeding \$10,000, the Tucker Act vests *exclusive* jurisdiction in the Claims Court.”)).

As this Court views the current matter as a claim to enforce a contract between Plaintiff and Defendant, the United States, and the amount in controversy exceeds \$10,000.00, the Tucker Act governs jurisdiction of this action. Accordingly, this Court must grant without prejudice Defendant’s Motion for Summary Judgment based on lack of subject matter jurisdiction.

An order follows.

