IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HAROLD WINFIELD SMITH	:	**CIVIL ACTION**
v.	:	
UNITED STATES OF AMERICA	:	**NO. 96-4742**

MEMORANDUM and ORDER

NORMA L. SHAPIRO, J. **JUNE 18, 1997**

Plaintiff, Harold Winfield Smith filed a complaint seeking a refund of United States taxes, compensatory and punitive damages totalling $39,893,659.38. For the reasons stated below, summary judgment will be granted in favor of the United States.

FACTS

The complaint, filed July 2, 1996, alleges that Mr. Smith is the victim of a conspiracy by certain employees of the Internal Revenue Service ("IRS") to deprive him of certain tax refunds. He describes a campaign of IRS harassment beginning in 1983 after he issued a speeding ticket to an IRS supervisor in the course of his employment as a highway patrolman. He further claims these IRS actions forced him to quit his job in 1983; consequently, he demands compensatory damages for lost wages, pension, stress, disability, legal expenses, health, medicare,

and the pain and suffering of his wife, plus punitive damages of 39 million dollars.

The tax refunds Mr. Smith seeks are as follows:

Tax Year	Refund Claimed
1982	$ 2,238.00
1983	$ 3,917.00
1984	$ 25.00
1986	$ unspecified
1987	$ 483.00
1988	$ unspecified
1994	$ 738.12
1995	$ 738.12 or $ 882.35 or $ 858.00[1]
1996	$ 858.00 or $ 992.00[2]

DISCUSSION

All of plaintiffs claims against the United States for compensatory damages and punitive damages are barred by the

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1. Plaintiff has claimed each of these amounts as due him for the tax year ending December 31, 1995. In his complaint, plaintiff claims $882.35, in his "settlement petition" he claims $ 738.12, and in his "plea for inclusion" he claims $858.00 (docket numbers 9, 17 and 26 respectively).

2. Plaintiff has claimed each of these amounts as due him for the tax year ending December 31, 1996. In his "settlement petition" he claims $ 858, and in his "plea for inclusion" he claims $992.00 (docket numbers 17 and 26 respectively).

sovereign immunity of the United States. See Lane v. Pena, 116 S.Ct. 2092, 2096-7 (1996) (claims for damages against the United States can only be brought if the government unambiguously waives sovereign immunity). The plaintiff may not recover any compensatory or punitive damages against the United States so only the refund claims are considered.

The IRS does not dispute that Mr. Smith was due refunds in the amounts of $ 2,238.00, $ 3,917.00 and $25.00 for the years 1982, 1983, and 1984, respectively. The IRS records show: a check for $2,238.00 was mailed on July 2, 1984; a check for $3,3917.00 was mailed on June 25, 1984; and a check for $26.25 (refund of $25.00 plus $1.25 in interest) was mailed on September 23, 1985. Copies of the checks were routinely destroyed after 7 years. Plaintiff alleges he never received the checks.

These claims "on account of a Treasury check," are governed by 31 U.S.C. § 3702. See Rodek v. United States, 1997 WL 200446 (D. Del. 1997); American Fuji Seal, Inc. v. United States, 34 Fed.Cl. 274 (1995). Section 3702 provides:

> Any claim on account of a Treasury check shall be barred unless it is presented to the agency that authorized the issuance of that check within one year after the date of issuance of that check or the effective date of this subsection, whichever is later.

The effective date was October 1, 1989, so the latest date Mr. Smith could have submitted a claim that he never received the checks was October 1, 1990. Plaintiff has not submitted any documents suggesting he made a claim before October 1, 1990, for the checks he never received. Plaintiff's claims for replacement

checks in the amounts of $2,238.00, $3,917.00, and $26.25 are barred by the relevant statute of limitations.

Mr. Smith's claim for tax year 1986 is that he paid his taxes in full with his tax return and should not be subject to any further liability for that year. Mr. Smith filed his 1986 return on April 17, 1989. According to Mr. Smith's allegations and IRS records, he owed taxes in the amount of $1,084 for that year; that amount was satisfied by withholdings and a check from Mr. Smith. However, Mr. Smith filed his return over two years late, so the IRS assessed interest and penalties under 26 U.S.C. §§ 6601 and 6651. Those charges were valid; Mr. Smith is not entitled to recover any money applied by the IRS to charges for penalties and interest. To contest these amounts, Mr. Smith would have had to file a claim for refund within three years from the date the return was filed or two years from the date the tax was paid, whichever was later. 26 U.S.C. § 6511(a). He failed to do so and cannot successfully obtain a 1986 refund in this action.

Mr. Smith's claim for a 1987 refund of $483.00 is that he was due a refund in the amount of $737, but he owed $253 to be deducted from that amount. The IRS claims Mr. Smith erred in filling out his tax return; the refund due him was $343.00; and that amount was applied to satisfy a deficiency in Mr. Smith's 1985 account. Motion for Summary Judgment Exhibit 1987-2. Mr. Smith contests the IRS reevaluation of his tax liability; this claim must be viewed as a refund claim governed by 26 U.S.C. §

6511(a): claims must be filed within three years from the date the return was filed or two years after the date the tax was paid, whichever is later. The 1987 return was filed and tax paid no later than July 9, 1990. Motion for Summary Judgment Exhibit 1987-2. The latest date a claim for refund based on the 1987 tax year could have been filed was July 9, 1993. As this action was filed on July 2, 1996, the claim for refund arising from the 1987 tax year is barred by the relevant statute of limitations.

Mr. Smith's 1988 claim alleges he paid his taxes in full with his amended return filed in October, 1992 (the return is dated October 8, 1992 and the IRS records show it was entered on October 14, 1992). Motion for Summary Judgment Exhibit 1988-3 and Exhibit B. Both the IRS and Mr. Smith agree he owed taxes in the amount of $1,421 and there was a federal withholding credit in the amount of $753.00. The return was filed late and the taxes were not timely paid in full. Because Mr. Smith filed his return over two years late, the IRS assessed penalties and interest under 26 U.S.C. §§ 6601 and 6651. Those charges were valid and Mr. Smith is not entitled to recover any money applied by the IRS to the charges for penalty and interest.[3]

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3. Mr. Smith filed a notice dated May 12, 1997, from the IRS notifying him that $957.66 would be applied to satisfy his 1988 tax deficiency. The IRS, responding at the direction of the court, presented evidence that $957.66 was the amount plaintiff still owed in penalties and interest. If Mr. Smith contests this amount, he must submit a claim on Form 843 to the IRS on or before May 12, 2000. A district court may not consider this claim until it has been formally reviewed and decided by the IRS.

The IRS does not dispute that plaintiff was entitled to refunds for the tax years 1994, 1995, and 1996. However, the IRS applied the refund amounts ($638.12 in 1994; $858 in 1995; and $992 in 1996) to satisfy tax deficiencies for 1985, 1986, 1988, and 1989. This was permissible so there are no valid claims for those years.

Mr. Smith is not entitled to recover any money from the IRS. The claims for compensatory and punitive damages are barred by the sovereign immunity of the United States. The 1982, 1983 and 1984 claims for refund checks are barred by the statute of limitations. The 1986 and 1987 claims are likewise barred by the statute of limitations. The 1986, 1987, 1988 and 1989 claims fail to state a cause of action as they contest penalties and interest lawfully imposed by the IRS. The claims for 1994, 1995, and 1996 are not valid; both Mr. Smith hand the IRS agree that he was owed refunds, but Mr. Smith claims the refunds should have been paid to him instead of applied to prior years' tax liabilities. Claims not barred as untimely must first be submitted (on form 843) to the IRS for consideration.[4]

An appropriate order follows.

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4. It must be observed that these repeated disputes arising out of application of tax refunds to penalties and interest charged for late payments could easily be avoided if Mr. Smith would file his tax returns and make payments within the time periods provided by law.

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ORDER

AND NOW, this day of June, 1997, in consideration of the United States' Motion for Summary Judgment, and plaintiff's responses thereto, it is **ORDERED** that the Motion for Summary Judgment is **GRANTED**. This action shall be marked **CLOSED**.

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Norma L. Shapiro, J.