

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10313

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GEORGE A. DAY,

Plaintiff-Appellant,

VERSUS

UNITED STATES OF AMERICA,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Northern District of Texas

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(3:91-CV-1809-X)

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(June 1, 1995)

Before WISDOM, WIENER and PARKER, Circuit Judges.

Per curiam:\*

Appellant, George A. Day ("Day") brought this action against Appellee, United States of America ("Government") seeking a refund of federal income tax and related assessments for the tax year

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\* Local Rule 47.5 provides:  
"The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession."  
Pursuant to that Rule, the Court has determined that this opinion should not be published.

1986. Day asserted jurisdiction for this action under 28 U.S.C. § 1346(a)(1). The Government counterclaimed, seeking payment of additional amounts for 1986. The district court dismissed Day's claims against the Government for lack of subject matter jurisdiction, then granted the Government's motion to voluntarily withdraw its counterclaim without prejudice.

Day failed to pay the full amount of income tax liability assessed as required before challenging the assessment in a refund suit filed in federal district court under § 1346. *Flora v. United States*, 362 U.S. 145, 177, 80 S.Ct. 630, 646, 4 L.Ed.2d 623 (1960). We agree with the district court that, although there are some exceptions to this rule, none apply to this case.

The district court was likewise without jurisdiction over Day's claim relative to the penalties assessed, because he failed to file a claim for refund. The district court's jurisdiction is explicitly limited by 26 U.S.C. § 7422(a), which prohibits any suit or proceeding for a refund of taxes prior to the filing of a claim for a refund with the Internal Revenue Service.

Finding no merit in the arguments advanced by Day, we AFFIRM the district court's dismissal for lack of subject matter jurisdiction.