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United States District Court,
N.D. Texas, Dallas Division.

Ramsey Adel KOUSSA, Plaintiff,
v.
UNITED STATES of America, Defendant.

Case No. 3:19-cv-1271-S-BT
|
Signed July 6, 2021

Attorneys and Law Firms

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FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

REBECCA RUTHERFORD, UNITED STATES MAGISTRATE JUDGE

***1** Before the Court is Defendant United States of America's "Motion to Transfer to the Court of Federal Claims," requesting the Court "dismiss this suit against the United States for lack of jurisdiction," under Rule 12(b)(1), "or in the alternative, [ ] transfer to the Court of Federal Claims." Mot. 1 (ECF No. 26). For the following reasons, the District Court should GRANT Defendant's motion and TRANSFER Plaintiff's claim to the Court of Federal Claims under 28 U.S.C. § 1631.

Background

Pro se Plaintiff Ramsey A. Koussa filed his original Complaint against "IRS/FBAR" on May 28, 2019, requesting a refund of the penalty assessed against him for failing to file a Federal Bank Account Report (FBAR) with the IRS for tax year 2013. Compl. 5, 7 (ECF No. 3). Less than a month later, Plaintiff amended his Complaint. *See* Am. Compl. (ECF No. 7). He alleges that, beginning in 2012, "Plaintiff hired an expensive CPA to handle all tax related finances." *Id.* at 1. Plaintiff routinely met with this CPA "[a]t every tax season, ... to discuss ... all details related to business and personal finances" and always followed his CPA's recommendations. *Id.* "However, his CPA, in his own admission ..., never thought of or asked about the foreign bank account, although he knew the Plaintiff was wiring money from a foreign bank" and had records of Plaintiff's wire transfers. *Id.* Consequently, Plaintiff failed to file a 2013 FBAR, and the IRS imposed the maximum penalty for a willful failure to file: $100,000.00. *Id.* at 1, 7. On June 25, 2018, the IRS Appeals Office "found no basis" to adjust Plaintiff's FBAR penalty and "sustained Exam's determination that [he] willfully failed to timely file an FBAR for tax year 2013." *Id.* at 7. On November 29, 2018, Plaintiff paid the U.S. Department of Treasury $109,676.72. *Id.* at 8. Plaintiff subsequently filed this lawsuit, requesting the Court determine his failure to file an FBAR not willful and refund him the penalty. *Id.* at 1-2, 6, 9. Plaintiff requests a refund of $109,676.72 on his Form 843 but only demands $99,676.72 on his civil cover sheet. *Id.* at 6, 9.

The United States answered Plaintiff's Amended Complaint and filed a "Motion to Transfer to the Court of Federal Claims," contending that jurisdiction over Plaintiff's lawsuit is only proper in the Court of Federal Claims. Answer (ECF No. 20); Mot. The United States' motion is fully briefed and ripe for determination. Pl.'s Resp. (ECF No. 27); Def.'s Reply (ECF No. 28).[1]

Preliminary Matters

As a preliminary matter, the United States requests "an Order dismissing the listed Defendants and substituting in the United States as the sole defendant." Mot. 1. Plaintiff does not oppose this request, and, while Plaintiff's original Complaint named "IRS/FBAR" as Defendant, his Amended Complaint names the "United States (IRS/FBAR)" as Defendant. Pl.'s Resp. 1 ("For reasons outlined below, Defendants' Motion should be denied except with respect to the UNITED STATES being the only named party."); Compl. 1; Am. Compl. 1. Because Plaintiff does not oppose Defendant's request to substitute the United States as the sole Defendant; Plaintiff's Amended Complaint lists the United States as Defendant; and "[i]n cases involving the IRS, the real party in interest is the United States of America," the Court should GRANT Defendant's request. *Kish v. Rogers*, No. H-06-2389, 2008 WL 2463819, at *5 (S.D. Tex. June 16, 2008) (Rosenthal, J.) (citing *In re Laughlin*, 210 B.R. 659, 660 (1st Cir. 1997); *In re Smith*, 205 B.R. 226, 227 n.1 (9th Cir. 1997) ("It is a well settled principle that the IRS cannot be sued and the proper party in actions involving federal taxes is the United States of America.")). Accordingly, the Court should direct the Clerk to update the docket sheet to reflect that the United States is the sole Defendant.

Legal Standards and Analysis

***2** "Sovereign immunity shields the United States from suit absent a consent to be sued that is 'unequivocally expressed.' " *United States v. Bormes*, 568 U.S. 6, 9 (2012) (Scalia, J.) (quoting *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 33-34 (1992) (Scalia, J.)). "[T]he existence of [that] consent is a prerequisite for jurisdiction," *United States v. Mitchell*, 463 U.S. 206, 212 (1983) (citations omitted), and "the terms" placed upon it, "as set forth expressly and specifically by Congress, define the parameters of a federal court's subject matter jurisdiction to entertain suits brought against [the United States]." *Ware v. United States*, 626 F.2d 1278, 1286 (5th Cir. 1980) (citing *United States v. Orleans*, 425 U.S. 807, 814 (1976) (Burger, C.J.); *Honda v. Clark*, 386 U.S. 484, 501 (1967); *Dalehite v. United States*, 346 U.S. 15, 30-31 (1953); *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). Thus, for a federal district court to exercise jurisdiction over a lawsuit against the United States, (1) the United States must have waived its sovereign immunity with respect to the particular claims asserted against it, and (2) the court must have a statutory basis for exercising jurisdiction. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005) (Kennedy, J.) (stating "district courts may not exercise jurisdiction absent a statutory basis"). Sometimes, but not always, a single statute accomplishes both of

these jurisdictional prerequisites. The Little Tucker Act and the Tucker Act, 28 U.S.C. §§ 1346(a)(2) and 1491(a)(1), respectively, are two such statutes. *See Bormes*, 568 U.S. at 10 (quoting *United States v. Navajo Nation*, 556 U.S. 287, 290 (2009) (Scalia, J.)) ("The Little Tucker Act and its companion statute, the Tucker Act, § 1491(a)(1), do not themselves 'creat[e] substantive rights,' but 'are simply jurisdictional provisions that operate to waive sovereign immunity for claims premised on other sources of law.' "); *Mitchell*, 463 U.S. at 212 (explaining "by giving the Court of Claims jurisdiction over specified types of claims against the United States, the Tucker Act constitutes a waiver of sovereign immunity with respect to those claims").

Defendant argues this Court lacks subject-matter jurisdiction under 28 U.S.C. § 1346(a)(2), the "Little Tucker Act," because Plaintiff requests a refund of more than $10,000.00. Mot. 5-6. Instead, Defendant contends, jurisdiction is proper only in the Court of Federal Claims under 28 U.S.C. § 1491(a)(1), the "Tucker Act," which does not have a jurisdictional dollar amount. *Id.* at 4-5. Plaintiff responds that he merely seeks "a ruling on whether [he] has committed an [sic] 'Nonwillful' FBAR violation," and the Court simply needs to "determine the fair amount of penalty," which would be no more than $10,000.00, "satisfying the Little Trucker [sic] Act." Pl.'s Resp. 3-4. Because Plaintiff requests a refund exceeding $10,000.00, the Court finds it lacks subject-matter jurisdiction to adjudicate Plaintiff's claim.

"The Tucker Act provides that '[t]he 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.' " *Sammons v. United States*, 860 F.3d 296, 298 (5th Cir. 2017) (quoting 28 U.S.C. § 1491(a)(1)). And the Little Tucker Act permits district courts to exercise jurisdiction, " 'concurrent with the United States Court of Federal Claims,' [over] a 'civil action or claim against the United States, not exceeding $10,000 in amount," for claims covered under the Tucker Act. *Bormes*, 568 U.S. at 10 (quoting 28 U.S.C. § 1346(a)(2)); *Mitchell*, 463 U.S. at 212 n.10 (citing 28 U.S.C. § 1346(a)(2)) ("The Tucker Act provided concurrent jurisdiction in the district courts over claims not exceeding $10,000."). To determine whether it has jurisdiction, the Court must evaluate whether three conditions set forth in the Tucker Act exist. *Amoco Prod. Co. v. Hodel*, 815 F.2d 352, 359 (5th Cir. 1987) (citing *Portsmouth Redev. & Hous. Auth. v. Pierce*, 706 F.2d 471, 473 (4th Cir. 1983)). Those conditions, if satisfied, vest subject-matter jurisdiction exclusively in the Court of Federal Claims. *Id.* They include whether: (1) the action is against the United States; (2) the action is founded upon the Constitution, federal statute, executive regulation, or government contract; and (3) the action seeks monetary relief in excess of $10,000. *Id.*

***3** Here, Plaintiff's action satisfies the conditions to vest jurisdiction exclusively in the Court of Federal Claims. First, Plaintiff's action is against the United States, as addressed

above. Second, Plaintiff's action is founded on a federal statute—specifically, the Bank Secrecy Act of 1970, which "require[s] [filing] certain reports and records that may be useful in 'criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities....' " *Bedrosian v. United States*, 912 F.3d 144, 147 (3d Cir. 2018) (quoting 31 U.S.C. § 5311); Am. Compl. 1 (citing 31 U.S.C. § 5321(a)(5) (setting forth civil penalties for a "[f]oreign financial agency transaction violation")). Plaintiff's particular claim arises under 31 U.S.C. § 5314, which "instructs the Secretary of the Treasury to prescribe rules that require persons to file an annual report identifying certain transactions or relations with foreign financial agencies." *Bedrosian*, 912 F.3d at 147 (citing 31 U.S.C. § 5314). "The Secretary ... implemented th[at] statute through various regulations, including 31 C.F.R. § 1010.350, which specifies that certain United States persons must annually file a[n FBAR] with the IRS ... by June 30 each year for foreign accounts exceeding $10,000 in the prior calendar year." *Id.* (citing 31 C.F.R. § 1010.306(c)). "The authority to enforce the FBAR requirement has been delegated to the Commissioner of Internal Revenue," and "civil penalties for a[n] FBAR violation are in 31 U.S.C. § 5321(a)(5)." *Id.* (citing 31 C.F.R. § 1010.810(g)). "The maximum penalty for a non-willful violation is $10,000," but "the maximum penalty for a willful violation is the greater of $100,000 or 50% of the balance in the unreported foreign account at the time of the violation." *Id.* (citing 31 U.S.C. §§ 5321(a)(5)(B)(i), 5321(a)(5)(C)(i)). Plaintiff contends the IRS imposed a penalty for a willful failure to file a 2013 FBAR, when his violation was non-willful. Am. Compl. 1. Accordingly, he seeks "to recover the excessive penalty and interest imposed by IRS/FBAR...." *Id.* at 2.

Moreover, claims contesting FBAR penalties imposed under 31 U.S.C. § 5321(a)(5), like Plaintiff's, have been construed as illegal-exaction claims falling under the Tucker Act and within the Court of Federal Claims' jurisdiction. While the Court of Federal Claims does not have jurisdiction to adjudicate Fifth Amendment due-process claims "standing alone," *see, e.g., Wheeler v. United States*, 11 F.3d 156, 159 (Fed. Cir. 1993) (citing *Hamlet v. United States*, 873 F.2d 1414, 1416 (Fed. Cir. 1989)), it "has jurisdiction to adjudicate an illegal exaction, as it 'involves a deprivation of property without due process of law, in violation of the Due Process Clause of the Fifth Amendment to the Constitution.' " *Kimble v. United States*, 141 Fed. Cl. 373, 382 (Fed. Cl. 2018) (quoting *Norman v. United States*, 429 F.3d 1081, 1095 (Fed. Cir. 2005)), *aff'd*, 991 F.3d 1238 (Fed. Cir. 2021). "An 'illegal exaction,' as that term is generally used, involves money that was 'improperly paid, exacted, or taken from the claimant in contravention of the Constitution, a statute, or a regulation.' " *Norman*, 429 F.3d at 1095 (quoting *Eastport S.S. Corp. v. United States*, 372 F.2d 1002, 1007 (Ct. Cl. 1967)). Tax-refund suits alleging that taxes have been improperly collected or withheld by the government are "classic illegal exaction claim[s]." *Id.* (citing *City of Alexandria v. United States*, 737 F.2d 1022, 1028 (Fed. Cir. 1984)). Thus, to fall under the Tucker Act, "a plaintiff must demonstrate that a 'statute or provision causing the exaction itself provides, either expressly or by necessary implication, that the remedy for its violation entails a

return of money unlawfully exacted.' " *Kimble*, 141 Fed. Cl. at 382 (quoting *Norman*, 429 F.3d at 1095). Here, Plaintiff contends that his failure to file a 2013 FBAR was not willful and that his penalty for violating 31 U.S.C. § 5314 should not exceed $10,000, as set forth in 31 U.S.C. § 5321(a)(5). *See* Am. Compl. 1-2. Because he paid the $100,000 fine for a willful violation as required by § 5321(a)(5), if Plaintiff succeeds on his claim, the remedy would entail returning the difference between the penalty imposed for a non-willful and willful violation. *See Kimble*, 141 Fed. Cl. at 382 (citations omitted) ("Therefore, if Plaintiff can establish that her violation of 31 U.S.C. § 5314 was not willful, the IRS's penalty assessment *ipso facto* is contrary to law and the court has jurisdiction to order the return of those funds."). Accordingly, the Court finds Plaintiff's claim is founded on a federal statute and falls under the Tucker Act, within the Court of Federal Claims' jurisdiction. *See Jarnagin v. United States*, 134 Fed. Cl. 368, 375 (Fed. Cl. 2017) ("[T]he Jarnagins assert that the government's assessment and collection of FBAR penalties was unlawful because 31 U.S.C. § 5321(a)(5) contains a prohibition on penalties where, inter alia, the taxpayer has reasonable cause for failing to file an FBAR. Thus, because the government based its exaction upon an asserted statutory power and because the Jarnagins claim that the penalty was exacted in contravention of that statute, the Jarnagins' claim is one for an illegal exaction and the Court has subject matter jurisdiction over it."); *see also Landa v. United States*, —— Fed. Cl. ——, No. 18-365, 2021 WL 1526511, at *5 (Fed. Cl. Apr. 19, 2021) (citation omitted) ("This court has previously exercised jurisdiction over claims contesting the 'assessment and collection of FBAR penalties' imposed under 31 U.S.C. § 5321(a)(5), construing these claims as illegal exactions.").

***4** Third, Plaintiff by this action seeks more than $10,000. Plaintiff attached to his Amended Complaint a copy of the check he wrote to the United States Department of Treasury for $109,676.72. Am. Compl. 8. On his Form 843, Plaintiff requests a refund of $109,676.72, though on his civil cover sheet he only demands $99,676.72. *Id.* at 6, 9. Regardless, either amount exceeds $10,000, prohibiting a district court from exercising jurisdiction. "Under the Tucker Act, the [Court of Federal Claims] has exclusive jurisdiction over claims against the United States for more than $10,000." *Sammons*, 860 F.3d at 299 (citation omitted) ("Sammons concedes that, because he seeks more than [$10,000], the district court had no statutory jurisdiction."); *see also Amoco Prod. Co.*, 815 F.2d at 358 ("If the claim exceeds $10,000, the Tucker Act grants exclusive jurisdiction to the Claims Court." (28 U.S.C. § 1491(a)(1))). "Jurisdictional amounts, like statutes of limitation, are conditions of the [United States'] waiver [of its immunity], and it is not for [the court] to extend the conditions that Congress has set." *Ware*, 626 F.2d at 1286 (citing *United States v. Kubrick*, 444 U.S. 111, 117-18 (1979); *Soriano v. United States*, 352 U.S. 270, 276 (1957); *Dalehite*, 346 U.S. at 30-31). Thus, because Plaintiff's claim satisfies all three conditions, the Court finds it lacks concurrent jurisdiction under the Little Tucker Act to adjudicate Plaintiff's claim and concludes jurisdiction is proper only in the Court of Federal Claims under the Tucker Act.

Nonetheless, in his response, Plaintiff contends the district court has jurisdiction under the Little Tucker Act, because he only "seek[s] a ruling on whether [he] has committed an [sic] 'Nonwillful' FBAR violation" for which the "fair amount of penalty [he] should have paid" is "$0 to $10,000[ ] thus, satisfying the Little Trucker [sic] Act." Pl.'s Resp. 3-4. Defendant argues in reply that the "Little Tucker Act does not contemplate what assessments the government allegedly *should* have made. Rather, it is framed in terms of the claim (or relief requested)." Def.'s Reply 2. Indeed, the Little Tucker Act grants concurrent jurisdiction to district courts for Tucker Act "claim[s] against the United States, not exceeding $10,000 in amount," referring to the amount of the claim. 28 U.S.C. § 1346(a)(2). Here, Plaintiff seeks approximately $100,000 from the United States for the illegal exaction he allegedly suffered. He does not argue that he seeks a refund of $10,000 or less. *See* Pl.'s Resp. Accordingly, Plaintiff's argument fails.

Plaintiff also contends the district court has jurisdiction under 28 U.S.C. § 1340. *Id.* at 3. Defendant replies that "[s]ection 1340 only confers jurisdiction for a cause of action which is already set forth in the Internal Revenue Code (title 26 U.S.C.)," and "[t]he FBAR penalty itself arises under Title 31." Def.'s Reply 2-3. Section 1340 provides: "[t]he district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade." 28 U.S.C. § 1340. It is not clear on the face of § 1340's text that "any Act of Congress providing for internal revenue," is confined only to those causes of action set forth in the Internal Revenue Code, or title 26 of the United States Code, as Defendant argues. But the Court need not determine the breadth of "Act[s] of Congress providing for internal revenue," because "§ 1340 ... does not constitute a waiver of sovereign immunity." *Brooks v. Snow*, 313 F. Supp. 2d 654, 660 n.5 (S.D. Tex. 2004) (citing *Geurkink Farms, Inc. v. United States*, 452 F.2d 643, 644 (7th Cir. 1971) (per curiam)), *aff'd sub nom. Brooks v. Dam*, 126 F. App'x 173, 173 (5th Cir. 2005) (per curiam); *see also Kulawy v. United States*, 917 F.2d 729, 733 (2d Cir. 1990) ("Section 1340 of 28 U.S.C. gives the federal district courts 'original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue,' but as a general jurisdictional statute, it does not of itself constitute a waiver of sovereign immunity." (quoting 28 U.S.C. § 1340 (1988)) (citing *Falik v. United States*, 343 F.2d 38, 40 (2d Cir. 1965) (Friendly, J.))); *Floyd v. USA*, W-18-MC-00302-ADA, 2018 WL 6920358, at *1 n.1 (W.D. Tex. Dec. 4, 2018) (stating "general jurisdiction statutes 28 U.S.C. § 1331 and 28 U.S.C. § 1340 ... alone are insufficient to waive the United States' sovereign immunity" (citing *Taylor v. United States*, 292 F. App'x 383, 385 (5th Cir. 2008) (per curiam))); *Cmty. Action Council of S. Tex. v. Zarate*, No. M-10-47, 2010 WL 11646744, at *2 (S.D. Tex. Sept. 8, 2010) ("28 U.S.C. § 1340 gives district courts 'original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue.' However, the statute 'is not a waiver of governmental immunity from suit or a consent to be sued.' " (citing *Guerkink Farms, Inc.*, 452 F.2d at 644; *Berman v. United*

States, 264 F.3d 16, 20 (1st Cir. 2001) (Boudin, C.J.))). Therefore, even if § 1340 were a proper statutory basis for exercising jurisdiction in this context, which the Court does not address, Plaintiff has not identified a provision under which the United States waived its sovereign immunity. *See* Pl.'s Resp.; Am. Compl.; *De Archibold v. United States*, 499 F.3d 1310, 1316 (Fed. Cir. 2007) (stating "a party seeking to invoke a district court's jurisdiction under [28 U.S.C. § 1331, a similar general jurisdiction statute,] must identify an independent basis for the waiver of sovereign immunity to proceed with a claim against the United States in district court" (internal quotation marks omitted) (citing *Kanemoto v. Reno*, 41 F.3d 641, 644 (Fed. Cir. 1994))). Accordingly, the Court does not have jurisdiction under § 1340.

***5** In its motion, Defendant also argues that 28 U.S.C. § 1355(a)[2] does not confer jurisdiction. Mot. 7-8. Though Plaintiff, as the party asserting the Court has jurisdiction, bears the burden to establish jurisdiction, the Court confirms that, like § 1340, § 1355(a) does not alone confer jurisdiction. *See Laufer v. Mann Hosp.*, L.L.C., 996 F.3d 269, 271 (5th Cir. 2021) (citation omitted) (stating the burden of proof on a motion to dismiss for lack of subject-matter jurisdiction is on the party asserting jurisdiction); *Bormes*, 568 U.S. at 9 (citation omitted) (stating waiver of United States' sovereign immunity must be "unequivocally expressed"); *see also Coastal Rehab. Servs., P.A. v. Cooper*, 255 F. Supp. 2d 556, 561 (D.S.C. 2003) ("Similarly, none of the other statutes cited by Winyah Defendants —28 U.S.C. §§ 1355, 1442, 1444, and 2501(a)—constitute a waiver of the United States's sovereign immunity in this case."); *In re $22,420.00 in U.S. Currency seized from Aaron Lamont Richards*, No. 4:08-cv-12-F, 2008 WL 1969209, at *2 (E.D.N.C. May 5, 2008) ("A simple reading of [28 U.S.C. §§ 1355 and 1395] confirms that they do not contain explicit statutory consent to suit by the United States."); *Ousley v. Gritis*, No. CV-S-97-427-DWH(LRL), 1998 WL 796732, at *2 (D. Nev. Oct. 6, 1998) ("Most of the statutory provisions relied upon by plaintiff confer general jurisdiction and, without more, do not constitute a waiver of sovereign immunity." (citing 28 U.S.C. §§ 1331, 1340, 1343, 1355, 1356, 1367) (case citations omitted)). Because Plaintiff has not identified a statute waiving the United States' sovereign immunity in this context, the Court also does not have jurisdiction under § 1355.

Though this Court does not have jurisdiction to adjudicate Plaintiff's claim under the Little Tucker Act, § 1340, or § 1355, the Tucker Act provides for exclusive jurisdiction in the Court of Federal Claims and waives the United States' sovereign immunity for claims it covers. *See Bormes*, 568 U.S. at 10 (citation omitted). And 28 U.S.C. § 1631[3] permits the district court to transfer Tucker Act claims exceeding $10,000 to the Court of Federal Claims when justice so requires. *Dunn McCampbell Royalty Int., Inc. v. Nat'l Park Serv.*, 964 F. Supp. 1125, 1139 (S.D. Tex. 1995), *aff'd*, 112 F.3d 1283 (5th Cir. 1997); *U.S. Marine, Inc. v. United States*, 478 F. App'x 106, 108 (5th Cir. 2012) (per curiam) (remanding "with instructions that the case be transferred to the Court of Federal Claims pursuant to 28 U.S.C. § 1631" because the district court "lacked jurisdiction to hear either [Tucker Act] claim"). Because Plaintiff filed his original Complaint in May of 2019,

almost two years ago, the Court finds it is in the interest of justice to transfer Plaintiff's case so that his claim may be resolved most efficiently. Therefore, the District Court should grant Defendant's motion and transfer Plaintiff's case to the Court of Federal Claims under 28 U.S.C. § 1631.

Recommendation

For the reasons stated, the District Court should GRANT the United States' motion (ECF No. 26) and TRANSFER Plaintiff's claim to the Court of Federal Claims under 28 U.S.C. § 1631.

***6 SO RECOMMENDED**.

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/ OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

All Citations

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Footnotes

1 Plaintiff also filed a surreply (ECF No. 29) without the Court's leave. "The court has not considered the surreply because the local civil rules do not permit a surreply to be filed without leave of court." *Theller v. US Bank Nat'l Ass'n*, No. 3:19-cv-2564-D, 2019 WL 7038360, at *1 n.2 (N.D. Tex. Dec. 19, 2019) (Fitzwater, J.) (citing N.D. Tex. L. Civ. R. 7.1(f) (allowing reply to be filed but not providing for surreply to be filed)).

2 "The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title." 28 U.S.C. § 1355(a).

3 "Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or, for cases within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to

which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred." 28 U.S.C. § 1631.

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