UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PFIZER, INC.,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.

16 Civ. 1870 (LGS)

OPINION AND ORDER

LORNA G. SCHOFIELD, District Judge:

Plaintiff Pfizer, Inc. brings this action against Defendant United States of America to recover interest due with respect to Pfizer's taxable year ended December 31, 2008. Defendant contends that the Court lacks subject matter jurisdiction over this action and seeks an order either dismissing the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(h)(3), or transferring this action to the United States Court of Federal Claims pursuant to 28 U.S.C. § 1631. For the following reasons, the motion is denied.

I. BACKGROUND

The following facts are taken from the Complaint and assumed to be true for the purposes of this motion. *See Littlejohn v. City of New York*, 795 F.3d 297, 306 (2d Cir. 2015).

Plaintiff was the parent corporation of a group of affiliated U.S. corporate taxpayers filing a consolidated federal income tax return for the year ended December 31, 2008. That tax return was due on March 15, 2009. On March 3, 2009, Plaintiff filed a Form 7004 for its tax year ended December 31, 2008, and extended the due date of its return until September 15, 2009. On September 11, 2009, Plaintiff timely filed its 2008 federal income tax return, which showed an overpayment of tax of $769,665,651. Plaintiff received an electronic return acknowledgement showing the Internal Revenue Service (the "Service") accepted Plaintiff's

2008 federal income tax return on September 11, 2009. On the return, Plaintiff requested that $500,000,000 of the overpayment be refunded and the balance of $269,665,651 be applied to its 2009 estimated tax. The Service processed the return, and six refund checks, totaling $499,528,499, were scheduled to issue on October 19, 2009.

Plaintiff never received the refund checks. Plaintiff made numerous inquiries of the Service about the status of the refund between December 2009 and February 2010. In February 2010, the Service confirmed that the six checks had not been sent and cancelled them. Plaintiff's transcript of account with the Service states that the six refund checks were issued on October 19, 2009, and canceled that same day.

On March 19, 2010, the Service deposited the $499,528,499 tax refund directly in Plaintiff's bank account via electronic funds transfer. No interest was paid on the $499,528,499 tax refund. Plaintiff subsequently filed a claim for refund on March 13, 2013, requesting allowable interest on the $499,528,499 tax refund under 26 U.S.C. § 6611. The Service disallowed the Plaintiff's claim for allowable interest. In this action, Plaintiff seeks interest in the amount of $8,298,048 for the period from March 15, 2009, when Plaintiff's return was due, until March 19, 2010, when Plaintiff received the tax refund.

II. STANDARD

In deciding motions to dismiss under Rule 12(b)(1), a court accepts as true all factual allegations in the complaint and draws all reasonable inferences in favor of the plaintiff. *Lotes Co. v. Hon Hai Precision Indus. Co.*, 753 F.3d 395, 403 (2d Cir. 2014). A plaintiff has the burden of showing by a preponderance of the evidence that subject matter jurisdiction exists. *Morrison v. Nat'l Australia Bank Ltd.*, 547 F.3d 167, 170 (2d Cir. 2008), aff'd, 561 U.S. 247 (2010).

III. DISCUSSION

Defendant's motion to dismiss for lack of subject matter jurisdiction is denied. This Court has subject matter jurisdiction over Plaintiff's suit pursuant to 28 U.S.C. § 1346(a)(1), which states in relevant part:

> The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of . . . [a]ny civil action against the United States for the *recovery* of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or *any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws*.

(emphasis added).

When confronting a question of statutory construction, this Court "begin[s] with the language of the statute." *Townsend v. Benjamin Enters.*, 679 F.3d 41, 48 (2d Cir. 2012). Plaintiff's claim for interest on an overpayment of tax falls within the plain meaning of the statute. Plaintiff seeks a "recovery," a term not defined by the statute but with two ordinary meanings: either "[t]he obtainment of a right to something . . . by a judgment or decree" or "[t]he regaining or restoration of something lost or taken away." Black's Law Dictionary (10th ed. 2014). The first definition applies here.

Plaintiff seeks recovery of "a sum," another term not defined by the statute but commonly understood to mean "[a] quantity of money." *Id*. The term is to be read in the conjunctive; "the function of the phrase ['a sum'] is to permit suit for recovery of items which might not be designated as either 'taxes' or 'penalties' by Congress or the courts." *Flora v. United States*, 362 U.S. 145, 149 (1960).

Plaintiff seeks to recover over $8 million in overpayment interest, which is "a sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue

laws." *E.W. Scripps & Co. v. United States*, 420 F.3d 589, 597 (6th Cir. 2005) (finding subject matter jurisdiction under § 1346(a)(1) because "any sum" includes overpayment interest). As the Supreme Court in *Flora* stated, "One obvious example of such a 'sum' is interest." *Id.* The Court in *Scripps* reasoned that:

> Congress, in enacting 26 U.S.C. § 6611 . . . has made clear that it believes that taxpayers should be compensated for the lost time-value of their money . . . . The payment of statutory interest reflects an attempt to return the taxpayer and the Government to the same positions they would have been in if no overpayment of tax had been made.

Id. Otherwise, the Sixth Circuit explained, the "Government [would] retain[] more money than it [is] due, i.e., an 'excessive sum.'" *Id.* The Tenth Circuit stated, "[A] complaint failing to allege that the IRS erroneously or illegally assessed or collected a tax does not automatically fall outside of the district court's jurisdiction. The district court also has jurisdiction over claims based upon allegedly excessive sums." *Selman v. United States*, 941 F.2d 1060, 1062 (10th Cir. 1991) (finding subject matter jurisdiction under § 1346(a)(1) over claim for excessive interest paid when IRS refused to abate interest), *superseded by statute on other grounds as stated in Hinck v. United States*, 550 U. S. 501 (2007). The weight of authority supports the conclusion that § 1346(a)(1) grants district courts subject matter jurisdiction over actions seeking overpayment interest.[1]

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[1] *See Scripps*, 420 F.3d at 598; *Ford Motor Co. v. United States*, 768 F.3d 580, 584 (6th Cir. 2014); *Wichita Ctr. for Graduate Med. Educ., Inc. v. United States*, No. 16-1054, 2016 WL 4000934, at *4 (D. Kan. July 26, 2016); *Triangle Corp. v. United States*, 592 F. Supp. 1316, 1317-18 (D. Conn. 1984); *Trs. of Bulkeley Sch. v. United States*, 628 F. Supp. 802, 803 (D. Conn. 1986). *But see Amoco Prod. Co. v. United States*, No. 87 C 8811, 1988 WL 9112, at *4-5 (N.D. Ill. 1988); *Alexander Proudfoot Co. v. United States*, 454 F.2d 1379, 1384 (Ct. Cl. 1972). Additionally, several district courts have decided cases seeking only overpayment interest without addressing the subject matter jurisdiction issue at any great length. *See, e.g.*, *Doolin v. United States*, 737 F. Supp. 732, 733-34 (N.D.N.Y. 1990) ("[W]ithout undue further elaboration, this court agrees . . . that a federal district court having subject matter jurisdiction over taxpayer refund suits by virtue of 28 U.S.C. § 1346(a)(1) also has subject matter jurisdiction over disputes, perhaps ancillary particularly where the underlying liability has been established and

Defendant's contrary arguments are unpersuasive. Defendant argues that, in *Ford Motor Co. v. United States*, 134 S. Ct. 510, 511 (2013), the Supreme Court's remand to the Sixth Circuit for an initial determination whether the district court had subject matter jurisdiction over Ford's action to recover overpayment interest "invited the Sixth Circuit to reconsider its holding in *Scripps*." This argument ignores the common practice of the Supreme Court to remand for an initial determination of issues not yet considered. Also, on remand, the Sixth Circuit in *Ford Motor* adhered to the *Scripps* holding, and certiorari was subsequently denied. 768 F.3d 580 (6th Cir. 2014), *cert. denied*, 135 S. Ct. 2858 (2015).

Defendant's reliance on *Amoco Production Co. v. United States*, No. 87 C 8811, 1988 WL 9112 (N.D. Ill. 1988), and *Alexander Proudfoot Co. v. United States*, 454 F.2d 1379 (Ct. Cl. 1972), is also unavailing. In *Amoco*, the plaintiff sought overpayment interest. 1988 WL 9112 at *1. The court in *Amoco* held that it lacked jurisdiction because either (1) the interest sought was not within the meaning of "sum" or (2) if the interest was within that term and the suit fell within § 1346(a)(1), then the court lacked jurisdiction because the plaintiff had failed to file an administrative claim as required under by 26 U.S.C. § 7422. *Id.* at *2. In explaining its rationale, the court reasoned that the plaintiff was not seeking "recovery" of the overpayment interest because the overpayment interest was not a sum previously paid. *Id.* at *4-5. In *Proudfoot*, the court stated in dictum that a claim for overpayment interest is "not . . . a refund of interest previously paid by the taxpayer . . . but simply [paid] because the Government has had the use of money found to belong to the taxpayer." *Proudfoot*, 454 F.2d at 1384. The reasoning in both cases assumes that "recovery" means "[t]he regaining or restoration of something lost or

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discharged, regarding the interest required by Congress to be paid on tax overpayments under 26 U.S.C. § 6611(a) and (b)(2)."), *rev'd on other grounds*, 918 F.2d 15 (2d Cir. 1990); *Citadel Indus., Inc. v. United States*, 314 F. Supp. 245 (S.D.N.Y. 1970) (making no reference to subject matter jurisdiction); *Phico Group, Inc. v. United States*, 692 F. Supp. 437 (M.D. Pa. 1988) (same).

taken away." Black's Law Dictionary (10th ed. 2014). As mentioned previously, "recovery" can also mean "[t]he obtainment of a right to something . . . by a judgment or decree." *Id.* Thus, whether Plaintiff previously paid the sum is not dispositive of whether Plaintiff's suit is encompassed within the language of § 1346(a)(1).

Because the present suit is encompassed within the plain meaning of the phrase "any sum," it is unnecessary to determine whether the suit could also be encompassed within the phrase "any internal-revenue tax," as several other courts have concluded.[2] *See, e.g.*, *Triangle Corp. v. United States*, 597 F. Supp. 507, 509 (D.Conn. 1984); *Trustees of Bulkeley Sch. v. United States*, 628 F. Supp. 802, 803 (D.Conn. 1984).

In addition to conferring subject matter jurisdiction over the present action, § 1346(a)(1) acts as a waiver of sovereign immunity, as required in any suit in which the United States is a defendant. *United States v. Forma*, 42 F.3d 759, 763 (2d Cir. 1994) (noting that § 1346(a)(1) is an explicit waiver of sovereign immunity); *Scripps*, 420 F.3d at 596 ("We conclude that [§ 1346(a)(1)] does supply the necessary waiver of sovereign immunity for the district court to exercise jurisdiction . . . .").

Finally, Defendant's request to transfer this action to the United States Court of Federal Claims pursuant to 28 U.S.C. § 1631 is denied. Section 1631 provides that "[w]henever a civil action is filed in 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 . . . to any other such court in which the action . . . could have been brought at the time it was filed." Because the Court has subject matter jurisdiction over this action, the first prerequisite to transfer pursuant to § 1631 -- "want of jurisdiction" -- is lacking.

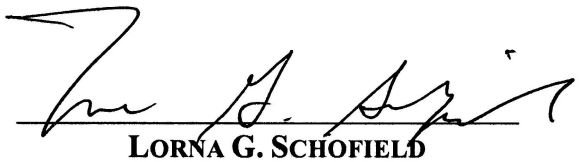
[2] Plaintiff does not contend the present suit is encompassed within the plain meaning of the phrase "any penalty."

IV. CONCLUSION

For the foregoing reasons, Defendants' Rule 12(b)(1) and 12(h)(3) motion is DENIED.

The Clerk of Court is directed to close the motion at Dkt. No. 27.

Dated: October 31, 2016
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE