

**TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE**  
**PART IV - JURISDICTION AND VENUE**  
**CHAPTER 85 - DISTRICT COURTS; JURISDICTION**

**§ 1346. United States as defendant**

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any 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;

(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 or unliquidated damages in cases not sounding in tort, except that the district courts 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 sounding in tort which are subject to sections 7104 (b)(1) and 7107 (a)(1) of title 41. 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.

(b) (1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228 (a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

(g) Subject to the provisions of chapter 179, the district courts of the United States shall have exclusive jurisdiction over any civil action commenced under section 453 (2) of title 3, by a covered employee under chapter 5 of such title.

(June 25, 1948, ch. 646, 62 Stat. 933; Apr. 25, 1949, ch. 92, § 2(a), 63 Stat. 62; May 24, 1949, ch. 139, § 80(a), (b), 63 Stat. 101; Oct. 31, 1951, ch. 655, § 50(b), 65 Stat. 727; July 30, 1954, ch. 648, § 1, 68 Stat. 589; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 88–519, Aug. 30, 1964, 78 Stat. 699; Pub. L. 89–719, title II, § 202(a), Nov. 2, 1966, 80 Stat. 1148; Pub. L. 91–350, § 1(a), July 23, 1970, 84 Stat. 449; Pub. L. 92–562, § 1, Oct. 25, 1972, 86 Stat. 1176; Pub. L. 94–455, title XII, § 1204(c)(1), title XIII, § 1306(b)(7), Oct. 4, 1976, 90 Stat. 1697, 1719; Pub. L. 95–563, § 14(a), Nov. 1, 1978, 92 Stat. 2389; Pub. L. 97–164, title I, § 129, Apr. 2, 1982, 96 Stat. 39; Pub. L. 97–248, title IV, § 402(c)(17), Sept. 3, 1982, 96 Stat. 669; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 806], Apr. 26, 1996, 110 Stat. 1321, 1321–75; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–331, § 3(b)(1), Oct. 26, 1996, 110 Stat. 4069; Pub. L. 111–350, § 5(g)(6), Jan. 4, 2011, 124 Stat. 3848.)

## Historical and Revision Notes

### 1948 Act

Based on title 28, U.S.C., 1940 ed., §§ 41(20), 931 (a), 932 (Mar. 3, 1911, ch. 231, § 24, par. 20, 36 Stat. 1093; Nov. 23, 1921, ch. 136, § 1310(c), 42 Stat. 311; June 2, 1924, ch. 234, § 1025(c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§ 1122(c), 1200, 44 Stat. 121, 125; Aug. 2, 1946, ch. 753, §§ 410(a), 411, 60 Stat. 843).

Section consolidates provisions of section 41 (20) conferring jurisdiction upon the district court, in civil actions against the United States, with the first sentence of section 931 (a) relating to jurisdiction of the district courts in tort claims cases, and those provisions of section 932 making the provisions of said section 41 (20), relating to counterclaim and set-off, applicable to tort claims cases, all of title 28, U.S.C., 1940 ed.

Provision in section 931 (a) of title 28, U.S.C., 1940 ed., for trials without a jury, is incorporated in section 2402 of this revised title. For other provisions thereof, see Distribution Table.

Words “commencing an action under this section” in subsec. (c) of this revised section cover the provision in section 932 of title 28, U.S.C., 1940 ed., requiring that the same provisions “for counterclaim and set-off” shall apply to tort claims cases brought in the district courts.

The phrase in section 931 (a) of title 28, U.S.C., 1940 ed., “accruing on and after January 1, 1945” was omitted because executed as of the date of the enactment of this revised title.

Provisions in section 41 (20) of title 28, U.S.C., 1940 ed., relating to time for commencing action against United States and jury trial constitute sections 2401 and 2402 of this title. (See reviser’s notes under said sections.)

Words in section 41 (20) of title 28, U.S.C., 1940 ed., “commenced after passage of the Revenue Act of 1921” were not included in revised subsection (a)(1) because obsolete and superfluous. Actions under this section involving erroneous or illegal assessments by the collector of taxes would be barred unless filed within the 5-year limitation period of section 1113(a) of the Revenue Act of 1926, 44 Stat. 9, 116. (See *United States v. A. S. Kreider Co.*, 1941, 61 S.Ct. 1007, 313 U.S. 443, 85 L.Ed. 1447.)

Words in section 41 (20) of title 28, U.S.C., 1940 ed., “if the collector of internal revenue is dead or is not in office at the time such action or proceeding is commenced” were omitted.

The revised section retains the language of section 41 (20) of title 28, U.S.C., 1940 ed., with respect to actions against the United States if the collector is dead or not in office when action is commenced, and consequently maintains the long existing distinctions in practice between actions against the United States and actions against the collector who made the assessment or collection. In the latter class of actions either party may demand a jury trial while jury trial is denied in actions against the United States. See section 2402 of this title. In reality all such actions are against the United States and not against local collectors. (See *Lowe v. United States*, 1938, 58 S.Ct. 896, 304 U.S. 302, 82 L.Ed. 1362; *Manseau v. United States*, D.C.Mich. 1943, 52 F.Supp. 395, and *Combined Metals Reduction Co. v. United States*, D.C.Utah 1943, 53 F.Supp. 739.)

The revised subsection (c)(1) omitted clause: “but no suit pending on the 27th day of June 1898 shall abate or be affected by this provision,” contained in section 41 (20) of title 28, U.S.C., 1940 ed., as obsolete and superfluous. The words contained in section 41 (20) of title 28, U.S.C., 1940 ed., “claims growing out of the Civil War, and commonly known as ‘war-claims,’ or to hear and determine other claims which had been reported adversely prior to the 3d day of March 1887 by any court, department, or commission authorized to have and determine the same,” were omitted for the same reason.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscp.html>).*

The words “in a civil action or in admiralty,” in subsection (a)(2), were substituted for “either in a court of law, equity, or admiralty” to conform to Rule 2 of the Federal Rules of Civil Procedure.

Words in section 41 (20) “in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable” were omitted from subsection (a)(2) of this revised section as unnecessary. See reviser’s note under section 1491 of this title.

For jurisdiction of The Tax Court to review claims for refunds of processing taxes collected under the unconstitutional Agriculture Adjustment Act, see sections 644–659 of title 7, U.S.C., 1940 ed., Agriculture, and the 1942 Revenue Act, Act Oct. 21, 1942, ch. 610, title V, § 510(a), (c), (d), 56 Stat. 667. (See, also, *Lamborn v. United States*, C.C.P.A. 1939, 104 F.2d 75, certiorari denied 60 S.Ct. 115, 308 U.S. 589, 84 L.Ed. 493.)

See, also, reviser’s note under section 1491 of this title as to jurisdiction of the Court of Claims in suits against the United States generally. For venue of actions under this section, see section 1402 of this title and reviser’s note thereunder.

Minor changes were made in phraseology.

### **Senate Revision Amendment**

The provision of title 28, U.S.C., § 932, which related to application of the Federal Rules of Civil Procedure, were originally set out in section 2676 of this revised title, but such section 2676 was eliminated by Senate amendment. See 80th Congress Senate Report No. 1559, amendment No. 61.

1949 Act

This section corrects typographical errors in section 1346 (a)(1) of title 28, U.S.C., and in section 1346(b) of such title.

### **References in Text**

Sections 6226, 6228(a), 7426, 7428, and 7429 of the Internal Revenue Code of 1986, referred to in subsec. (e), are classified to sections 6226, 6228 (a), 7426, 7428, and 7429, respectively, of Title 26, Internal Revenue Code.

### **Amendments**

2011—Subsec. (a)(2). Pub. L. 111–350 substituted “sections 7104 (b)(1) and 7107 (a)(1) of title 41” for “sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978”.

1996—Subsec. (b). Pub. L. 104–134 designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 104–331 added subsec. (g).

1992—Subsec. (a). Pub. L. 102–572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1986—Subsec. (e). Pub. L. 99–514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1982—Subsec. (a). Pub. L. 97–164 substituted “United States Claims Court” for “Court of Claims”.

Subsec. (e). Pub. L. 97–248 substituted “section 6226, 6228 (a), 7426, or” for “section 7426 or section”.

1978—Subsec. (a)(2). Pub. L. 95–563 excluded from the jurisdiction of district courts civil actions or claims against the United States founded upon any express or implied contract with the United States or for damages in cases not sounding in tort subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978.

1976—Subsec. (e). Pub. L. 94–455 inserted “or section 7429” and “or section 7428 (in the case of the United States district court for the District of Columbia)”, after “section 7426”.

1972—Subsec. (f). Pub. L. 92–562 added subsec. (f).

1970—Subsec. (a)(2). Pub. L. 91–350 specified that the term “express or implied contracts with the United States” includes express or implied contracts 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.

1966—Subsec. (e). Pub. L. 89–719 added subsec. (e).

1964—Subsec. (d). Pub. L. 88–519 struck out provisions which prohibited district courts from exercising jurisdiction of civil actions or claims to recover fees, salary, or compensation for official services of officers or employees of the United States.

1958—Subsec. (b). Pub. L. 85–508 struck out reference to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

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1954—Subsec. (a)(1). Act July 30, 1954, struck out language imposing jurisdictional limitation of \$10,000 on suits to recover taxes.

1951—Subsec. (d). Act Oct. 31, 1951, inserted references to “claim” and “employees”.

1949—Subsec. (a)(1). Act May 24, 1949, § 80(a), inserted “, (i) if the claim does not exceed \$10,000 or (ii)”.

Subsec. (b). Acts Apr. 25, 1949, and May 24, 1949, § 80(b), made a technical change to correct “chapter 173” to read “chapter 171”, and inserted “on and after January 1, 1945” after “for money damages”.

### **Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–331 effective Oct. 1, 1997, see section 3(d) of Pub. L. 104–331, set out as an Effective Date note under section 1296 of this title.

### **Effective Date of 1992 Amendment**

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of this title.

### **Effective Date of 1982 Amendments**

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of this title.

### **Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978 and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2391, formerly set out as an Effective Date note under section 601 of former Title 41, Public Contracts.

### **Effective Date of 1970 Amendment**

Section 2 of Pub. L. 91–350 provided that:

“(a) In addition to granting jurisdiction over suits brought after the date of enactment of this Act [July 23, 1970], the provisions of this Act [amending this section and section 1491 of this title and section 724a of former Title 31, Money and Finance] shall also apply to claims and civil actions dismissed before or pending on the date of enactment of this Act if the claim or civil action is based upon a transaction, omission, or breach that occurred not more than six years prior to the date of enactment of this Act [July 23, 1970].

“(b) The provisions of subsection (a) of this section shall apply notwithstanding a determination or judgment made prior to the date of enactment of this Act that the United States district courts or the United States Court of Claims did not have jurisdiction to entertain a suit on an express or implied contract with a nonappropriated fund instrumentality of the United States described in section 1 of this Act.”

### **Effective Date of 1966 Amendment**

Section 203 of title II of Pub. L. 89–719 provided that: “The amendments made by this title [amending this section and sections 1402 and 2410 of this title] shall apply after the date of the enactment of this Act [Nov. 2, 1966].”

### **Effective Date of 1958 Amendment**

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

### **Transfer of Functions**

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of

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related references, see sections 468 (b), 551 (d), 552 (d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

### **Termination of United States District Court for the District of the Canal Zone**

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.