Section 1346 (a) (1) provides that the District Courts shall have jurisdiction, concurrent with the Court of 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 [362 U.S. 145, 149]  without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws . . . ." (Emphasis added.)

The ancestry of the language of 1346 (a) (1) is no more enlightening than is the legislative history of the 1921 provision. This language, which, as we have stated, appeared in substantially its present form in the 1921 amendment, was apparently taken from R. S. 3226 (1878). But 3226 was not a jurisdictional statute at all; it simply specified that suits for recovery of taxes, penalties, or sums could not be maintained until after a claim for refund had been submitted to the Commissioner. [11](https://caselaw.findlaw.com/us-supreme-court/362/145.html" \l "f11)

For reasons which will appear later, we believe that the conclusion would not follow even if the premises were clearly sound. But in addition we have substantial doubt about the validity of the premises. As we have already indicated, the language of the 1921 amendment does in fact tend to indicate a congressional purpose to require full payment as a jurisdictional prerequisite to suit for refund. Moreover, we are not satisfied that the suit against the Collector was identical to the common-law action of assumpsit for money had and received. One difficulty is that, because of the Act of February 26, 1845, c. 22, 5 Stat. 727, which restored the right of action against the Collector after this Court had held that it had been implicitly eliminated by other legislation, [12](https://caselaw.findlaw.com/us-supreme-court/362/145.html" \l "f12)the Court no longer regarded the suit as a common-law action, but rather as a statutory remedy which "in its nature [was] a remedy against the Government." Curtis's Administratrix v. Fiedler, 2 Black 461, 479. On the other hand, it is true that none of the statutes relating to this type of suit clearly indicate a congressional intention to require full payment of the assessed tax before suit. [13](https://caselaw.findlaw.com/us-supreme-court/362/145.html" \l "f13)Nevertheless, the opinion of this Court in Cheatham v. United States, [92 U.S. 85](https://caselaw.findlaw.com/us-supreme-court/92/85.html), prevents us from accepting the [362 U.S. 145, 154]   analogy between the statutory action against the Collector and the common-law count. In this 1875 opinion, the Court described the remedies available to taxpayers as follows:

"So also, in the internal-revenue department, the statute which we have copied allows appeals from the assessor to the commissioner of internal revenue; and, if dissatisfied with his decision, on paying the tax the party can sue the collector; and, if the money was wrongfully enacted, the courts will give him relief by a judgment, which the United States pledges herself to pay.