

June 19, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-50747

WRS GROUP LTD; SJS PARTNERSHIP,

Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
6:05-CV-166

Before GARWOOD, SMITH and DEMOSS, Circuit Judges.

PER CURIAM:*

We agree with the district court that under the form of the transactions at issue the amounts paid were for the sale of the stock and not compensation for personal services, and that under *C.I.R. v. Danielson*, 378 F.2d 771 (3d Cir. 1967) - which we adopted in *Spector v. C.I.R.*, 641 F.2d 376, 384-86 (5th Cir. 1981) - the

*Pursuant to 5TH CIR. R. 47.5 the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Commissioner can insist on the form of the transaction as selected by appellant notwithstanding appellant's contention that it does not reflect the underlying economic realities and notwithstanding that the sellers were departing employees and minority stockholders of appellant's predecessor. See, e.g., *Nestle Holdings, Inc. v. C.I.R.*, 152 F.3d 83, 87 & n.4 (2d Cir. 1998). We further agree with the district court that appellant has not made a sufficient showing of mistake, fraud or undue influence to support, as between the parties to the transaction, a judicial recasting of it as in substance sought by appellant. See *Spector* at 386. The judgment of the district court is

AFFIRMED.