

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Nos. 91-5101 & 91-5105
Summary Calendar

KARL L. and CLARA J. DAHLSTROM,

Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

On Appeal from the Decision
of the United States Tax Court
(19904-83 & 4860-89)

(July 29, 1993)

Before GARWOOD, JONES and EMILIO M. GARZA, Circuit Judges.*

GARWOOD, Circuit Judge:

In these consolidated appeals involving a tax dispute, plaintiffs-appellants, Clara and Karl Dahlstrom (the Dahlstroms), appeal the Tax Court's determination that they owe additional taxes, penalties, additions to tax, and interest on unreported income for the years 1977 through 1983. In Cause No. 19904-83, the

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Tax Court held that the Dahlstroms were liable for unreported income for the years 1977, 1978, and 1979. In Cause No. 4860-89, the Tax Court held that the Dahlstroms were liable for unreported income for the years 1980, 1981, 1982, and 1983. The Dahlstroms contend that the Tax Court erred in finding that their scheme of shifting income from themselves to a series of largely foreign trusts was a sham solely intended to avoid income taxes. We disagree with the Dahlstroms and we affirm.

Facts and Proceedings Below

Karl Dahlstrom invented a scheme to attempt to avoid taxes by shifting income earned in the United States to foreign trusts that owed no income tax in the United States and then shifting the income back to himself to use it for his personal needs. He thought that his idea was so wonderful that he taught other people how to do it at seminars in which he charged participants \$6,000 to \$12,000 each. He called his seminar program the American Law Association, though he never had any formal tax or legal training. To date, at least twenty taxpayers have been found liable by the Tax Court for participating in Dahlstrom's scheme.¹ Finally, it is time for Dahlstrom to pay the piper.

Using the scheme that he taught others, Karl Dahlstrom would deposit the fees he earned from his seminars into a foreign trust and not report most of these amounts as income in the joint income

¹ See, e.g., *Sandvall v. Commissioner*, 898 F.2d 455 (5th Cir. 1990); *Akland v. Commissioner*, 767 F.2d 618 (9th Cir. 1985); *Zmuda v. Commissioner*, 731 F.2d 1417 (9th Cir. 1984); *Able Company v. Commissioner*, 59 T.C.M. (P-H) ¶ 90,500 (1990); *Professional Services v. Commissioner*, 79 T.C. 888 (1982).

tax returns he filed with his wife.² This foreign trust would then purchase information packets at a ridiculous markup from a second trust created by the Dahlstroms. Alternatively, the second trust would provide "services" to the first trust for a fee. These arrangements created false business expense deductions for the first trust meaning that it would owe no income tax in the United States for the money it received from its American operations. The second trust would engage in an identical transaction with a third foreign trust that would owe no tax in the United States because it was a foreign trust receiving income from a foreign source. From the third trust, the Dahlstroms would circuitously make the money available for their personal use in several ways. First, the Dahlstroms would transfer money from the second trust to other foreign trusts, which would then "gratuitously" purchase and maintain personal property for the Dahlstroms, such as three houses, several cars, and several boats. Second, the Dahlstroms would have one of their foreign trusts borrow money from another foreign trust in return for a demand promissory note. The creditor trust would then "donate" the demand note to the Dahlstroms, who received the note as a "tax free" gift of intangible property from a foreign trust under I.R.C. § 2501. Then the Dahlstroms would collect on the note and have cash available for personal use. Third, the Dahlstroms would continue to shift money among the foreign trusts and eventually withdraw funds from a trust account to purchase a certificate of deposit, which in turn was used to

² During the years 1977, 1978, and 1979, these fees totaled \$244,372.1, \$483,757.62, and \$938,221.39 respectively.

purchase a personal asset. None of these or other similar transactions was conducted at arms length or for any business purpose. As a practical matter, the Dahlstroms, of course, owned and controlled all of the trusts and all of the trusts' bank accounts.³

The Internal Revenue Service audited the Dahlstroms and determined that tax deficiencies and additions to tax were mandated by the Internal Revenue Code. In 1983, the Dahlstroms filed a petition for redetermination of the deficiencies asserted for the 1977 through 1979 tax years. The Tax Court held that the Dahlstroms owed the deficiencies and additions to tax computed by the IRS with a slight adjustment. The Dahlstroms appealed. Similarly, in 1989, the Dahlstroms filed a petition for redetermination of the deficiencies asserted for the 1980 through 1983 tax years. The Tax Court held that the Dahlstroms owed the deficiencies and additions to tax computed by the IRS with a slight adjustment. The Dahlstroms appealed. The two appeals were consolidated.

The Dahlstroms' appellate brief contains no statement of facts and no citations to the record. Although the brief lists five issues to be considered on appeal, the brief contains argument on only one issue.

³ To comply with foreign laws on trust creation, Dahlstrom for a nominal fee would hire taxi cab drivers or the like to be "trust creators" if necessary; these individuals had no further connection with the trusts. Some of the Dahlstrom trusts were "owned" by other trusts that they controlled. Often one trust would also be the "trustee" of another trust, but, of course, the Dahlstroms directly controlled all the activities of all of the trusts involved in this matter.

Discussion

Preliminarily, we address the fact that four of the five issues listed in the Dahlstroms' brief as points of error are not argued in their brief. Issues listed, but not argued, are "'considered waived and will not be entertained on appeal.'" *United States v. Valdiosera-Godinez*, 932 F.2d 1093, 1099 (5th Cir. 1991), *cert. denied*, 61 U.S.L.W. 3772 (1993) (quoting *United Paperworkers Int'l Union v. Champion Int'l Corp.*, 908 F.2d 1252, 1255 (5th Cir. 1990) (issues raised in brief but not argued waived); *Friou v. Phillips Petroleum Co.*, 948 F.2d 972, 974 (5th Cir. 1991)). Thus, we will not address the four issues raised in the Dahlstroms' brief but not argued.⁴

The only issue the Dahlstroms have properly raised on appeal is whether the Tax Court erred legally and factually in determining that the Dahlstrom trusts were shams that had no economic substance and were only used to allow the Dahlstroms to understate their

⁴ Issue E involved the Tax Court's finding of fraud. Dahlstrom does devote two sentences, intermingled in the argument on the one issue that is argued, to the contention that the Tax Court erred in finding fraud; however, this contention is thus advanced without citations to the record or legal authority (apart from the *Dahlstrom* case cited in the next sentence) and is so conclusory and undeveloped that we find this issue to be abandoned. We observe that although the Ninth Circuit held in *United States v. Dahlstrom*, 713 F.2d 1423 (9th Cir, 1983), *cert. denied*, 104 S.Ct. 2363 (1984) (criminal fraud not proven), that the United States failed to prove Dahlstrom acted fraudulently beyond a reasonable doubt, this is a civil case in which the government bears the burden of proof only by clear and convincing evidence. 26 U.S.C. § 7454 (1988); *Akland*, 767 F.2d at 621 (distinguishing *Dahlstrom*, 713 F.2d at 1423). Moreover, unlike *Dahlstrom* this case does not present the context of advocacy of an abstract program with attendant First Amendment implications. See *Akland* at 621-22; *United States v. Russell*, 804 F.2d 571, 576 (9th Cir. 1986) (Ferguson, J., concurring). There are badges of real fraud aplenty here.

taxable income.

Income is taxed to the person who earns it, regardless of any scheme to divert the payment of the income to another party. *Sandvall v. Commissioner*, 898 F.2d 455, 458 (5th Cir. 1990). Diverting income to a sham trust does not relieve the income earner of the duty of paying tax on that income because the substance of the transaction prevails over its form. *Id.*; *Zmuda*, 731 F.2d 1417, 1421 (9th Cir. 1984).

There is no legal basis presented from which we could conclude, after crediting the Tax Court's factual findings and inferences, that the Dahlstrom trusts were not wholly sham entities and that the Dahlstroms were not using the sham trusts to avoid paying income tax due on income earned by the Dahlstroms. Numerous cases in this and other circuits have recognized that schemes of transferring money among foreign trusts that were identical to the Dahlstroms' were shams because they lacked a business purpose or economic substance. *Sandvall*, 898 F.2d at 457 (taxpayer held liable for deficiencies created when income shifted through foreign American Law Association type trusts even though trust itself not a party to action); *Akland*, 767 F.2d at 618 (Dahlstrom trusts); *Zmuda*, 731 F.2d at 1417 (American Law Association trusts); *United States v. Tranakos*, 911 F.2d 1422, 1430-31 (10th Cir. 1990) (criminal conviction for use of Dahlstrom trust). See *Clapp v. Commissioner*, 875 F.2d 1396 (9th Cir. 1989); *United States v. Kouba*, 822 F.2d 768 (8th Cir. 1987) (criminal conviction for activities related to use of Dahlstrom trusts); *United States v. Turner*, 799 F.2d 627 (10th Cir. 1986) (criminal conviction for tax

fraud involving sales of foreign American Law Association trusts). The Tax Court did not err in reaching the legal conclusion that, on the facts found, Dahlstrom-type trusts are shams that can be ignored in determining a taxpayer's true income.

Whether the particular Dahlstrom trusts at issue are shams is a factual question. The taxpayer bears the burden of proof in challenging deficiency determinations made by the Internal Revenue Service. *Sandvall*, 898 F.2d at 457-458. Briefs filed in this court are required to contain a statement of facts and record citations supporting all facts presented in the brief, whether in the statement of facts section or in the argument section of the brief. FED. R. APP. P. 28(a)(3) (1993); 5TH CIR. LOC. R. APP. P. 28.2.3; *Moore v. FDIC*, 993 F.2d 106 (5th Cir. 1993); *Plattenburg v. Allstate Ins. Co.*, 918 F.2d 562, 564 (5th Cir. 1990) (sanctions imposed for filing brief without record citations and without citing relevant cases). There is no basis in the Dahlstroms' brief to find that the Tax Court's fact findings that the trusts were shams were clearly erroneous because their brief contains no statement of facts, no arguments that the Tax Court erred in finding particular significant or controlling facts, and *no record citations*. In fact, the trusts were shams. The Dahlstroms maintained total control over the trusts, transferred income properly allocable to them to the trusts to avoid taxes, and then used the trust property for personal purposes. They were the sole beneficiaries of the trusts. The trusts did not carry on any business of their own for profit. No business or economic reason was shown for forming the vast number of trusts involved or for the

numerous transfers of money among them. Unlike *Rice's Toyota World, Inc. v. Commissioner*, 752 F.2d 89, 96 (4th Cir. 1985), there is little evidence that the Dahlstrom trusts even contained any elements of economic substance. Factually, there are few distinctions between the Dahlstrom trusts at issue in these cases and those previously found to be shams in the cases cited above. See, e.g., *Sandvall*, 898 F.2d at 458 (sanctions imposed for frivolous appeal of similar issues). Thus, it is clear that the Dahlstrom trusts were sham entities.

"The time has come for them to join the rest of their fellow citizens at the annual income roundup." *Id.* at 459.

Conclusion

The Dahlstroms have demonstrated no reversible error in the challenged judgments of the Tax Court. Accordingly, the judgments of the Tax Court in Cause No. 19904-83, and in Cause No. 4860-89 are

AFFIRMED.