IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5102
(Summary Calendar)

MARSHALL H. MARTIN,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Appeal from the United States Tax Court

(TC No. 21416-90)

(February 22, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[*]

In this income tax case, implicating the Individual Retirement Accounts (IRAs) of pro se Petitioner-Appellant Marshall H. Martin,

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[*]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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the Tax Court held on the basis of essentially undisputed facts that the distribution from Martin's E. F. Hutton IRA on February 5, 1987, by check payable to Martin and by him endorsed and delivered to Merrill, Lynch within a matter of minutes that same day as the opening deposit of a new IRA, constituted a non-taxable rollover rather than a trustee-to-trustee transfer. As a result, a subsequent rollover, made within less than twelve months following the one on February 5, 1987, was not exempt from tax even though it would have been if the February distribution had been a trustee-to-trustee transfer. Martin appeals, continuing to insist as he did in the Tax Court that the initial distribution and re-deposit should be deemed a trustee-to-trustee transfer or, alternatively, that the IRS should be equitably estopped to challenge it because Martin relied on advice from agents of the IRS in confecting the transactions of February 5th. Finding no reversible error by the Tax Court, we affirm.

I

In its Memorandum Findings of Fact and Opinion filed June 8, 1992 (T.C. Memo. 1992-331), the Tax Court stated that "[w]hile we are sympathetic to petitioner's situation, we are unable to grant him the treatment he requests." This court is equally sympathetic if not more so. But, like the Tax Court before us, we have no choice under the circumstances of this case but to affirm the position of the Commissioner. We do not delude ourselves into thinking that our expressions of sympathy, understanding and regret for Martin's "gotcha" will diminish one iota his frustration with

and resentment of the hypertechnicality of the system that produced his phantom taxable income. Nevertheless, while courts may employ the rule of lenity in some criminal cases and may "cut some slack" to under-educated, under-experienced pro se parties in complying with some non-jurisdictional procedural matters or technical requirements of form and format, it is not our place to alter the effects of substantive law when the law is correctly--albeit coldly--enforced.

Regarding the applicable substantive law and the analysis of this case, we find that we could not improve on the opinion rendered by the Tax Court. We therefore incorporate it herein by reference and attach a copy hereto as Appendix I.

AFFIRMED.