

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-5189

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ROME RUTLEDGE,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

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Appeal from a Decision of the United States Tax Court  
(9983-89)

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August 30, 1993

Before WIENER, EMILIO M. GARZA, Circuit Judges, and LITTLE,\*  
District Judge.

PER CURIAM\*\*:

Petitioner-Appellant Rome Rutledge appeals the Tax Court's finding that four checks which were mailed to him between March and June 1985 were received by him during that year and were thus includable in his taxable income for that year))and not for 1986, when Rutledge cashed the checks. As we find no reversible error in

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\* District Judge of the Western District of Louisiana, sitting by designation.

\*\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 court's determination that the amounts of the four checks should have been included in Rutledge's 1985 taxable income, we affirm.

## I

### BACKGROUND

Rutledge had mineral investments that produced royalty payments for him during the years at issue in this lawsuit. One of those investments resulted in royalty payments being remitted from time to time by Forest Oil Co. and another in at least one such payment from Pride Pipeline. Directly relevant to this appeal are seven royalty payments made by Forest during 1985, respectively on January 1, January 31, February 28, March 29, April 30, May 31, and June 28. Indirectly implicated is the Pride payment, which was made in March 1985.

Rutledge was also divorced in 1985. His now ex-wife, Ruth Rutledge, had sued for divorce in August 1984. During the pendency of the divorce proceedings, Ruth acted as temporary receiver of the assets of the community.<sup>1</sup> Among other things, she deposited royalty payments that the couple received and ran the family oil business. The divorce became final on April 23, 1985.

Ruth received the first three of the above listed Forest Oil checks and deposited them in a joint account. The last four Forest Oil checks were not received by Ruth and are central to the instant

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<sup>1</sup> It appears that immediately after the divorce petition was filed, Rutledge went to Las Vegas and began to squander the assets of the community. The state court thus placed the couples' assets (including the family business) in the temporary care of Ruth.

appeal. Rutledge acknowledged receiving these four checks but asserts that he did not receive them until sometime in 1986. He insists that is the year in which he found the checks and cashed them. He thus argues that the amounts of those checks should be taxable in 1986 (when, incidentally, he experienced a net operating tax loss against which the royalty income could be offset). The Commissioner asserts that the four payments were in fact received by Rutledge in 1985, and were thus taxable in that year irrespective of when he elected to cash them.

In the Tax Court, the Commissioner bore the burden of proof of the fact and the timing of the taxpayer's receipt of the four checks.<sup>2</sup> The Commissioner's proof consisted of three uncontested facts: 1) Forest Oil mailed the four checks on their respective dates of issue in 1985, 2) Ruth never received those four checks, and 3) Rutledge had physical possession of the checks some time before he negotiated them in 1986. Additionally, the Commissioner notes that Rutledge never specifically denied receiving the checks in 1985.

Rutledge's argument was (and is) that, as he allegedly found the checks in a box among his belongings in 1986 and cashed them in 1986, he therefore could not have had access to them in 1985.<sup>3</sup>

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<sup>2</sup> See Tax Court R. 142(a).

<sup>3</sup> Specifically, Rutledge testified as follows concerning his receipt of the checks:

I don't know where the checks were all that time. I would have cashed them, had I))I presume, if I had them. . . . I found them in '86, I presume. Based on the fact that I cashed them, I didn't see them until '86. . . . It must have been in '86 sometime . . . . There is no way of

The Tax Court ruled in favor of the Commissioner. Concerning the burden of proof as to receipt of the checks, the court stated:

We are satisfied, based on this record, that [Rutledge] . . . received [the subject checks] from Forest Oil in 1985. The parties agree that the checks were not sent to or received by Ruth Rutledge. [Rutledge] did not testify that he did not receive the checks, but rather argued that [the Commissioner] failed to establish that he did receive them. Although [the Commissioner] has the burden of proof with respect to the additional amounts claimed in his amended answer, [Rutledge] was in the best position to enlighten the Court concerning the circumstances surrounding receipt of the checks. If petitioner did not receive the checks in 1985, we would expect him to testify to this effect or otherwise to present supporting evidence as to how the checks came into his possession. [Rutledge] testified only that he found the checks in 1986 in a box among his belongings and that they were cashed by him in October 1986. We are satisfied that [Rutledge] received the checks soon after they were issued in 1985.<sup>4</sup>

The court thus held that the amounts of the four checks were taxable in 1985. Rutledge timely appealed.

## II

### ANALYSIS

#### A. Standard of Review

We have stated that "[o]ur standard of review for appeals from the United States Tax Court is the same as for appeals from the district court." Under that standard, "[w]e review findings of

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telling where I found them. I can't remember that far back. . . . It has been a lot of years. I don't know. I am not sure I remember things last year. . . . I found them somewhere. I had to. I don't remember it, but I had to because they weren't cashed until))it looks like October of '86. So I must have found them in October.

<sup>4</sup> (Emphasis added).

fact for clear error and legal conclusions de novo."<sup>5</sup>

B. The Commissioner's Burden of Proof

The thrust of Rutledge's main argument on appeal is that the Tax Court ignored the fact that the Commissioner bore the burden of proof as to Rutledge's receipt of the checks. Rutledge seizes upon the court's statement that "[Rutledge] was in the best position to enlighten the Court concerning the circumstances surrounding the receipt of the checks" and asserts that "[t]he above quotation clearly establishes that the Tax Court ignored the fact that the government had the burden of proof as to this issue." We disagree.

The two stipulations proffered to the Tax Court clearly sufficed to meet the Commissioner's initial production burden of demonstrating that Rutledge timely received the subject checks.<sup>6</sup> We have stated "[p]roof that a letter properly directed was placed in a U.S. post office mail receptacle creates a presumption that it reached its destination in the usual time and was actually received by the person to whom it was addressed."<sup>7</sup> In the instant case, the parties stipulated to the posting of the checks by Forest by early- and mid-1985.

Once the Commissioner thus met his initial burden, Rutledge

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<sup>5</sup> McIngvale v. Commissioner, 936 F.2d 833, 836 (5th Cir. 1991).

<sup>6</sup> See Beck v. Somerset Technologies, Inc., 882 F.2d 993, 996 (5th Cir. 1989). See generally Simpson v. Home Petroleum Corp., 770 F.2d 499, 503 (5th Cir. 1985) (discussing burden shifting and the initial burden born by the plaintiff).

<sup>7</sup> Beck, 882 F.2d at 996 (citing Hagner v. United States, 285 U.S. 427 (1932)).

had to come forward with sufficient evidence to reverse the presumption of timely receipt that arose from the Commissioner's initial proffer.<sup>8</sup> But all that Rutledge produced was what the Commissioner asserts was (and the tax court obviously found to be) a torrent of "evasive testimony that he presumably received the checks in 1986 because he did not cash them until that year."

On appeal, Rutledge insists that he did come forward with sufficient evidence to prove that he received the checks in 1986. He points to several statements made during his testimony, asserting that his statements "clearly raised a doubt as to whether [he] received the 4 Forest Checks in 1985." He asserts that he specifically denied receiving the Pride Pipeline check in 1985. (Although that check is not the subject of the instant case, it was sent to Rutledge in 1985 and was cashed by him in 1986, around the time he cashed the Forest Oil checks.) Rutledge asserts that his testimonial evidence was sufficient to rebut the Commissioner's prima facie case of Rutledge's 1985 receipt of the checks, and that the Commissioner was thus required to come forward with additional evidence that Rutledge received the checks in 1985.

Rutledge ignores the crucial finding implicit in the holding of the Tax Court: The factfinder found Rutledge's assertions about finding the checks in 1986 to lack credibility. After our thorough review of the record, we are unwilling to say that the Tax Court clearly erred in finding Rutledge's assertions of non-receipt of the checks until 1986 to be unbelievable. The Commissioner's

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<sup>8</sup> Id.

proffered evidence of receipt was facially sufficient, and Rutledge never provided any credible evidence to debunk it. In addition to the Tax Court's credibility determination, which is owed considerable deference, we observe that Rutledge's insistence that his alleged finding of the checks and cashing them in 1986 proves he did not receive them in 1985 to be a classic non-sequitur.

C. The Effect of the State Court's Restrictions on Rutledge.

The divorce settlement awarded to Ruth all of the "overrides" from the mineral investments that produced the Forest Oil checks. Even though Rutledge received the checks, cashed them, and apparently spent the money, and even though he has (according to the record before us) never received a judicial demand from Ruth for an accounting of the proceeds, he asserts that these amounts were not income to him because "Ruth was entitled to an injunction to prevent [Rutledge] from cashing the checks." We find Rutledge's argument on this point to be frivolous.

Neither the briefs nor the record reflect that Ruth ever sought to recover all or any portion of the proceeds from the four checks here at issue. All that she did was to have her attorney initiate action with the oil companies after the June 1985 payment (the last one under consideration here) to stop their sending royalty checks to Rutledge))i.e., she properly had all subsequent payments sent to her. Indisputably, Rutledge received and enjoyed the subject payments. He will not be heard to argue that they were not taxable simply because the payments were subject to a potential

claim of right by his ex-wife.<sup>9</sup>

III

CONCLUSION

For the foregoing reasons, the decision of the tax court is  
AFFIRMED.

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<sup>9</sup> See James v. United States, 366 U.S. 213, 219-20 (1961).