

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1502
Conference Calendar

GRAYDON L. GIBSON ET AL.,

Plaintiffs-Appellants,

versus

DALLAS COUNTY EDUCATION DISTRICT,
and All Other County Education
Districts in the State of Texas,

Defendant-Appellee,

ATTORNEY GENERAL, State of Texas,
and TEXAS EDUCATION AGENCY,

Intervening Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:92-CV-2388-R
- - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

The suit by Texas taxpayers Graydon L. and Oleta Gibson seeking a refund from state ad valorem taxes is barred by the Tax Injunction Act, 28 U.S.C. § 1341.

The Tax Injunction Act applies to suits for state tax refunds. Bland v. McHann, 463 F.2d 21, 27 (5th Cir. 1972), cert.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

denied, 410 U.S. 966 (1973). The act prohibits the district court from exercising jurisdiction over state tax refund suits unless the state fails to supply a plain, speedy, and efficient remedy for the taxpayers' claim. Smith v. Travis County Education District, 968 F.2d 453, 455-56 (5th Cir. 1992); United Gas Pipe Line Co. v. Whitman, 595 F.2d 323, 330 (5th Cir. 1979).

"The inquiry into whether a plain, speedy and efficient remedy exists focuses on whether a state provides a procedural vehicle that affords taxpayers the opportunity to raise their federal constitutional claims." Smith, 968 F.2d at 456. A state provides a plain, speedy, and efficient remedy when it provides taxpayers with a full hearing and judicial determination with ultimate review available in the United States Supreme Court. Rosewell v. LaSalle National Bank, 450 U.S. 503, 514, 101 S.Ct. 1221, 67 L.Ed.2d 464 (1981). "The general rule is that the availability of a refund action satisfies section 1341's requirement that an adequate state remedy exists." United Gas, 595 F.2d at 331. If such is available, in actions for the refund of state taxes the federal courts must defer to the state administrative and judicial remedies, and the aggrieved party must pursue relief in state courts. Id. at 325.

The taxpayers have a "plain, speedy and efficient" remedy under the Tax Injunction Act because Texas courts would allow them to assert their federal due process claims. See McQueen v. Bullock, 907 F.2d 1544, 1547-48 and n. 9 (5th Cir. 1990), cert. denied, 499 U.S. 919 (1991). Texas "has a vast arsenal to assure orderly adjudication of [] serious federal constitutional

[questions]" in state tax suits. Id. at 1550 (internal quotation and citation omitted).

As in Smith, "[t]he taxpayers have not demonstrated that the state courts have refused to entertain their federal claim in their pending state court actions. Nor do they show that their state remedy is uncertain or speculative." Smith, 968 F.2d at 456.

AFFIRMED.