IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2560
Summary Calendar

TANDY TOLLERSON AND BERNITA TOLLERSON,

Plaintiffs-Appellants,

versus

ROY WOLFE, REVENUE OFFICER, ET AL.,

Defendants-Appellees.

Appeals from the United States District Court for the
Southern District of Texas
(CA-H-91-2762)

(April 26, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

The taxpayers filed suit in district court requesting, inter alia, an injunction against the Internal Revenue Service's ("IRS") collection activities on grounds that the IRS failed to follow proper assessment and collection procedures. Because we find the IRS did follow proper procedures, we affirm the district court's grant of summary judgment to the IRS.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I

Tandy Tollerson invested in two limited partnerships, Educators Energy Investment Partnership ("Educators") and First Firm Ware Ltd. partnership ("Firm Ware"), in 1983 and 1984, respectively. Mr. Tollerson and his wife claimed certain credits from the Educator's partnership that reduced the tax liability on their 1983 joint tax return and generated a refund from prior tax years. The Tollersons claimed certain deductions from the Firm Ware partnership on their 1984 joint tax return that reduced their tax liability for that year.

In 1986, the IRS audited the Educator's partnership and a partnership in which the Firm Ware partnership was invested.[1] In conducting these audits, the IRS followed the TEFRA partnership-level audit procedures provided in 26 U.S.C. §§ 6221-6233.[2] These audit procedures allow the IRS to deal with the partnership through one Tax Matters Partner and to make all adjustments at the partnership level, instead of auditing each individual partner's return. See 26 U.S.C. §§ 6221-6233 (1988). The audits resulted in increased tax liabilities for the Tollersons. When the liabilities

[1]The American Resources Technology partnership.

[2]Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), 26 U.S.C. §§ 6221-6232 (1988); The Deficit Reduction Act of 1984 § 714(p)(1), 26 U.S.C. § 6233 (1988). The TEFRA partnership-level audit procedures are applicable for partnership tax years beginning after September 3, 1982. TEFRA, Pub. L. No. 97-248, § 407, 96 Stat. 324, 670-71 (1982).

were not paid in full, the IRS levied on the Tollersons' wages and assets to collect the deficiencies.

The Tollersons filed suit asserting various grounds for injunctive relief against the IRS. Unpersuaded, the district court granted summary judgment to the IRS.

II

On appeal, the Tollersons make four meritless claims. First, the Tollersons ask for an injunction against the IRS's collection activities on the grounds that the TEFRA partnership-level audit procedures did not apply to them because Mr. Tollerson was not a partner in the limited partnerships. Thus, argue the Tollersons, the IRS was required to audit and assess taxes against them individually instead of using the partnership-level procedures. See 26 U.S.C. §§ 6212-6213 (1988) (requiring the IRS to send a notice of deficiency to the taxpayer individually prior to assessment and collection). Consequently, argue the Tollersons, an exception to the Anti-Injunction Act's general prohibition against injunctions applies allowing this court to grant relief--section 6212, which allows an injunction when the IRS failed to issue a timely notice of deficiency. See 26 U.S.C. § 7421(a) (1988). Mr. Tollerson, however, signed the limited partnership agreements, and the Tollersons reflected the partnerships' credits and deductions on their individual tax returns.[3] Accordingly, the TEFRA audit

[3]Unlike shareholders in a corporation, partners reflect their distributive shares of partnership income or loss on their

procedures, instead of the regular nonpartnership audit procedures apply. 26 U.S.C. § 6230(a) (1988). Further, in accordance with the TEFRA audit procedures, appropriate notices were sent to the partnerships and the Tollersons. See 26 U.S.C. § 6223 (1988). Thus, the untimely notice of deficiency exception to the Anti-Injunction Act is not applicable in this case, and injunctive relief is barred.

Second, the Tollersons assert a wrongful levy action under 26 U.S.C. § 7426. The Tollersons cannot bring a section 7426 action because section 7426 only allows a person other than the taxpayer--here, the Tollersons--to bring the action.

Third, the Tollersons' vague wrongful disclosure claim under 26 U.S.C. § 7431 will not support an injunction. Section 7431 grants taxpayers a cause of action for damages--not an injunction--if the IRS discloses certain tax return information. See 26 U.S.C. § 7421 (1988) (providing no statutory exception to the Anti-Injunction Act for wrongful disclosure). Further, the Tollersons' inspecific and conclusory claim does not even address the likelihood that the government would prevail or whether the failure of the court to issue an injunction would work an irreparable injury for which there is no legal remedy. See Alexander v. "Americans United" Inc., 416 U.S. 752, 758, 94 S.Ct. 2053, 2057, 40 L.Ed.2d 518 (1974). On the contrary, the Tollersons are free to

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individual tax returns because the partnership itself does not pay tax on its own income. See 26 U.S.C. §§ 701-702 (1988).

pay the tax and sue the IRS for a refund. 28 U.S.C. § 1346(a)(1) (1988). Thus, the judicial exception to the Anti-Injunction Act is inapplicable.

Fourth, the Tollersons' claim that the district court erred in refusing to allow more discovery is meritless. Here, the district court was not "arbitrary or clearly unreasonable" in refusing to allow more discovery because Mr. Tollerson's own signature on the limited partnership agreement and the partnership credits and deductions claimed on his tax returns clearly reflected that he was a limited partner in partnerships subject to the TEFRA audit procedures. See Williamson v. United States Dept. of Agric., 815 F.2d 368, 382 (5th Cir. 1987).

Finally, we cannot fathom how the taxpayers can argue that Mr. Tollerson was not a limited partner for the purposes of receiving notices under the TEFRA partnership-level audit procedures, and yet was a partner for the purpose of taking partnership credits and deductions on his tax returns.[4] Accordingly, we hold that this

[4]Similarly, the argument that Mr. Tollerson was not a partner under Texas law because the limited partnership agreement forbade him to take part in the management of the partnership betrays a fundamental misunderstanding of state partnership law and federal tax law. Participating in the management of a limited partnership may have made Mr. Tollerson a general partner subject to the general liabilities of the partnership, while refusal to so participate might shield Mr. Tollerson from such liability. See TEX. REV. CIV. STAT. ANN. art. 6132a (West 1970). In either case, however, Mr. Tollerson would remain a partner subject to the TEFRA audit procedures. See 26 U.S.C. §§ 7701(a)(2), 6221-6233 (1988).

appeal is frivolous and award the IRS double costs and $1,000 in damages. See Fed. R. App. P. 38.

III

For the reasons stated above, the district court's order is

A F F I R M E D.