

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2712  
Conference Calendar

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UNITED STATES OF AMERICA,

Defendant-Appellee,

versus

DANIEL A. SPACEK,

Plaintiff-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-91-577  
- - - - -  
(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, . . . demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." L & B Hosp. Ventures, Inc. v. Healthcare Int'l, Inc., 894 F.2d 150, 151 (5th Cir.), cert. denied, 498 U.S. 815 (1990).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Internal Revenue Service Form 4340 is "presumptive proof of a valid assessment" if the taxpayer has produced no evidence to counter that presumption. United States v. McCallum, 970 F.2d 66, 71 (5th Cir. 1992). Daniel A. Spacek has produced no evidence to rebut the presumption that the assessments filed against him are valid. Spacek's contention that the district court lacked jurisdiction over his person because he is a "non-resident alien" is facially frivolous. United States v. Madkins, 14 F.3d 277, 279 (5th Cir. 1994).

Spacek is cautioned that the filing of future frivolous appeals may result in the imposition of the full panoply of sanctions.

APPEAL DISMISSED; CAUTION ISSUED.