

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3686
Summary Calendar

Estate of
LILLIAN STULB REISGEN,

Plaintiff-Appellant,

VERSUS

UNITED STATES OF AMERICA
and
INTERNAL REVENUE SERVICE,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-92-4090-F)

(February 10, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

The plaintiff estate filed this action purportedly to obtain a refund of income taxes. In fact, it appears that the estate actually was seeking a return of estate taxes based upon an excessive levy made by the Internal Revenue Service some six years earlier.

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

In a persuasive opinion entered August 16, 1993, the district court explained that recovery is barred by the three-year statute for credits or refunds. See 26 U.S.C. § 6511(a), (b)(1). The estate acknowledges that the illness of its former attorney may have resulted in a delay in seeking relief. In fact, the estate has never filed a claim for credit or refund of the estate taxes, but now bases its claim on a refund of income taxes for 1991.

As the district court found, the estate tax return was filed in 1974, and the alleged overpayment of estate tax (resulting from the excess levy) occurred in June 1985. Accordingly, the estate had until June 1987 to file a claim with regard to that overpayment. Instead, nothing was filed until 1991.

The unfortunate fact is that, although the government received more money than was due, the estate had an obligation to file for refund or credit within the time allowed by law. Its failure to do so is fatal.

The judgment is AFFIRMED.