

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-4092  
Summary Calendar

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GHOLAM R. ZAKHIREH,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

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Appeal from a Decision of the United States Tax Court  
(TC # 7598-88)

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(December 5, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:<sup>1</sup>

Gholam R. Zakhireh appeals the United States Tax Court's decision that it had jurisdiction over Zakhireh's petition seeking redetermination of a deficiency in his income tax for 1983. We **AFFIRM.**

I.

As Zakhireh acknowledges in his brief, our court's recent decision in *McKnight v. C.I.R.*, 7 F.3d 447 (5th Cir. 1993), *reh'g denied*, 15 F.3d 182 (5th Cir. 1994), "ruled on precisely the legal

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<sup>1</sup> 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 Pursuant to that rule, the court has determined that this opinion should not be published.

issue at the heart of this case, and ruled against [Zakhireh's] position".<sup>2</sup> It is more than well-settled that "one panel may not overrule the decision, right or wrong, of a prior panel in the absence of en banc reconsideration or superseding decision of the Supreme Court". *Batts v. Tow-Motor Forklift Co.*, 978 F.2d 1386, 1393 & n.15 (5th Cir. 1992) (internal quotation marks and citation omitted).

Except for his bald assertion, unsupported by any argument or citation of authority, that this case is factually distinguishable from *McKnight* because it involves a limited partnership rather than a general partnership, Zakhireh makes no attempt to explain why that factual distinction is material or why *McKnight* is not dispositive of the issues on appeal. In his reply brief, Zakhireh

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<sup>2</sup> The instant appeal was continued at Zakhireh's request, pending our court's decision in *McKnight*. In his April 5, 1993, motion for continuance, Zakhireh asserted that the issues in *McKnight* and this case are "substantially identical", and that our court's "decision in McKnight should be dispositive of this appeal". In a second motion for continuance, filed on March 31, 1994, after *McKnight* was decided by our court, Zakhireh sought a further continuance pending the filing of a petition for a writ of certiorari in *McKnight*. In that motion, Zakhireh stated that "[t]he issues presented in McKnight are substantially identical to the issues presented in this case. The final decision in McKnight could be dispositive of this appeal". In his reply brief, Zakhireh states that his original belief that *McKnight* would be dispositive was based on an understanding that a petition for a writ of certiorari would be filed in *McKnight*, but that McKnight's death changed those plans.

Zakhireh's counsel was one of the counsel of record for the taxpayers in *McKnight*. See 7 F.3d at 448. A member of this panel recently denied Zakhireh's request for leave to file a suggestion for rehearing en banc out of time in the *McKnight* case. Zakhireh did not suggest that his appeal be heard initially en banc, as provided for in Fed. R. App. P. 35(c) ("suggestion must be made by the date on which the appellee's brief is filed").

asserts for the first time that we are not bound by **McKnight** because the decision of the United States Supreme Court in **C.I.R. v. Keystone Consolidated Indus., Inc.**, \_\_\_ U.S. \_\_\_, 113 S. Ct. 2006 (1993), "effectively overrules" **McKnight**. Because **Keystone** was decided in May 1993, approximately six months *before* our court decided **McKnight**, **Keystone** is not a "superseding decision" of the Supreme Court and thus provides no basis for reconsidering **McKnight**, or for failing to recognize it as binding precedent in this case.

II.

For the foregoing reasons, the decision of the Tax Court is

**AFFIRMED.**