UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-4146
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

COURTNEY F. SMITH; IMOGENE S. SMITH; TERRI BAGWELL, AS TRUSTEE FOR THE COURTNEY SMITH FAMILY TRUST; AND FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF SHREVEPORT,

Defendant-Appellant.

Appeal from the United States District Court
For the Western District of Louisiana
(90 CV 746)

September 10, 1993

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant taxpayers appeal the district court's judgment holding the taxpayers indebted to the United States for assessed taxes and penalties and holding that property held in a trust is subject to foreclosure to satisfy the taxpayers' indebtedness. We affirm the judgment of the district court.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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

The United States brought suit against the Appellants for collection of federal income taxes and penalties and for foreclosure of tax liens upon property held by the Courtney Smith Family Preservation Trust (the Trust). Pursuant to the report and recommendation of the magistrate judge, the district court granted partial summary judgment in favor of the United States, holding that property held by the Trust could be used to satisfy any valid tax liens levied against the taxpayers. Specifically, the court found that the tax court's finding in previous litigation estopped the taxpayers from asserting that the Trust was anything other than a sham. The district court subsequently granted summary judgment in favor of the United States, finding that the government's assessments against the taxpayers were valid. After the assessments were reduced to judgment, the Appellants filed timely notices of appeal.

II.

The Appellants present two issues meriting discussion in this appeal. First, the Appellants argue that the assessments were invalid because they were made on an "RACS report -- 006," rather than on a "Form 23-C" referred to in an Internal Revenue Manual. Second, the Appellants assert that the tax court's opinion in previous litigation does not estop them from urging the validity of the Trust because the Trust was not a party to the previous litigation and because the tax court did not properly address the issue. We disagree with both of Appellants contentions.

A.

The district court found that the "RACS report -- 006," a computer-generated form, satisfied procedural requirements for recording assessments of taxes and penalties. The Appellants argue that the "RACS report -- 006" is not recognized as an acceptable form by the Internal Revenue Manual which requires that assessments be recorded on a typewritten "Form 23-C." We agree with the district court's reasoning that the manual provision requiring use of "Form 23-C" serves internal functions and may not be relied upon by a taxpayer to invalidate an assessment.

Section 6203 of the Internal Revenue Code provides that assessments "shall be made by recording the liability of the taxpayer . . . in accordance with rules or regulations prescribed by the Secretary." Section 301.6203-1 of the Treasury Regulations on Procedure and Administration, promulgated under the authority of section 6203, requires that a tax liability be recorded and that a summary record of assessment be signed by an assessment officer; these requirements were met in this case. The regulation does not require that a summary record of assessment be on "Form 23-C."

As support for their contention that "Form 23-C" must be used to create a valid assessment, the taxpayers cite procedures contained in the then current Internal Revenue Manual, 5312-(1), MT 5300-1 (11-15-85). The procedure instructs the assessment officer to sign "a Form 23C, Assessment Certificate," an outdated reference to a typewritten manual form replaced by the computerized "RACS report -- 006." However, the taxpayers' reliance on the procedural rules of the Internal Revenue Service is misplaced. The manual "govern[s] the internal affairs of the Internal Revenue Service [and] do[es] not have the force and effect of law." **Einhorn v. DeWitt**, 618 F.2d 347, 350 (5th Cir. 1980) (citing **United States v. Thomas**, 593 F.2d 615 (5th Cir. 1979)). Therefore, the manual's reference to "Form 23-C" does not invalidate the assessments issued against the taxpayers.

B.

We also agree with the district court that the taxes owed are collectible by foreclosing liens against property held by the Trust. The validity of the Trust has been the subject of previous litigation in the tax court. **See Smith v. Commissioner of Internal Revenue**, 52 T.C.M. (CCH) 691 (1986).

The tax court reviewed the Commissioner's notice of deficiency against the taxpayers for tax years 1980 and 1981, wherein the Commissioner determined that income reported by the Trust was taxable as personal income. The tax court found that through use of the Trust, the taxpayer had attempted to divert taxation of personal income. The tax court held that the Trust was not a taxable entity for federal income tax purposes because it "lacked economic substance" and was a "sham." The tax court's decision is entitled to collateral estoppel effect.

Collateral estoppel operates to bar in any future lawsuit the relitigation of an issue of ultimate fact by the party against whom the issue is determined by a valid and final judgment. **Hibernia Nat'l Bank v. United States**, 740 F.2d 382, 387 (5th Cir. 1984). In tax cases, collateral estoppel "must be confined to situations where the matter raised in the second suit is identical in all respects with that decided in the first proceeding and where the controlling facts and applicable rules remain unchanged." **Id.**

We agree with the magistrate judge's report and recommendation that the issue resolved by the tax court is identical to the issue now urged by the taxpayers. The issue now before this court is the same issue addressed by the tax court -- whether the Trust should be disregarded for federal tax purposes. Furthermore, the controlling facts and rules remain unchanged. Although the tax court's opinion deals with assessments for different tax years than some of the assessments in this case, the Trust is the same.

We also agree that the absence of the trustee from the tax court litigation is not fatal to collateral estoppel. The trustee was in privity with the taxpayers; the trustee's interest was adequately protected by the taxpayers' defense of the legitimacy of the trust.

For the foregoing reasons, the judgment of the district court is

AFFIRMED.