

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4253
Summary Calendar

ALLEN M. KEELER and JUANA I. KEELER,

Petitioners-Appellants,

VERSUS

COMMISSION OF INTERNAL REVENUE,

Respondent-Appellee.

Appeal from the United States Tax Court
(TC # 16156-90)

September 9, 1993

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Allen M. Keeler and Juana I. Keeler, *pro se*, appeal the decisions of the United States Tax Court determining deficiencies in, and imposing additions to, their federal income tax. We **AFFIRM.**

I.

For the tax years 1985 through 1988, the Keelers failed to file federal income tax returns. Accordingly, in April 1990, the Commissioner of Internal Revenue determined deficiencies against

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 Pursuant to that rule, the court has determined that this opinion should not be published.

each for those years. Additionally, the Commissioner imposed various additions to tax as penalties. The Keelers petitioned the Tax Court for redeterminations of the deficiencies and additions, and their petitions were consolidated. Following a trial, the Tax Court issued an opinion in March 1992, reducing some of the deficiencies, sustaining others, and sustaining imposition of the additions to tax. In May, the Keelers filed a motion to "revise" the Tax Court's decision, which was denied. Thereafter, the Commissioner filed proposed computations; the Keelers filed objections; and the Tax Court adopted the Commissioner's computations and entered its decisions in December 1992.

II.

The Keelers do not challenge the accuracy of the deficiencies and additions upheld by the Tax Court. Instead, their sole contention, which they have maintained throughout this litigation, is that the Commissioner lacks authority to assess and collect income taxes, because the delegation of authority from the Secretary of the Treasury to the Commissioner was never published in the Federal Register. Thus, they contend, "[n]o citizen can be adversely affected or bound by an unpublished order and may safely ignore such order with impunity".

The Federal Register Act provides that the following materials must be published in the Federal Register:

- (1) Presidential proclamations and Executive orders, except those not having general applicability and legal effect or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof;

(2) documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and

(3) documents or classes of documents that may be required so to be published by Act of Congress.

44 U.S.C. § 1505(a). Treasury Department Orders, including Order No. 150-10, which delegates responsibility from the Secretary of the Treasury to the Commissioner "for the administration and enforcement of the Internal Revenue laws", do not fall within the purview of § 1505(a). See **Lonsdale v. United States**, 919 F.2d 1440, 1446 (10th Cir. 1990) (orders are not "Presidential proclamations", "Executive orders", or documents that "the President has determined to have general applicability and legal effect"); **United States v. Saunders**, 951 F.2d 1065, 1068 (9th Cir. 1991) (orders "fall squarely within section 1505(a)'s express exception for orders `effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof.' ... They simply effected a shifting of responsibilities wholly internal to the Treasury Department"); **Brewer v. United States**, 764 F. Supp. 309, 317 (S.D.N.Y. 1991); **United States v. McCall**, 727 F. Supp. 1252, 1254 (N.D. Ind. 1990). Accordingly, the Keelers' contention lacks merit.

III.

For the foregoing reasons, the decisions of the Tax Court are

AFFIRMED.