

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8088

IN THE MATTER OF: DAVID MARCUS HOLDREN and
 HARRIET SUE HOLDREN, Debtors.

DAVID MARCUS HOLDREN and
HARRIET SUE HOLDREN,

Appellants,

versus

UNITED STATES OF AMERICA, ET AL.,

Appellees.

Appeal from the United States District Court for the
Western District of Texas
(A-91-CV-849)

(April 22, 1994)

Before REAVLEY and JOLLY, Circuit Judges, and PARKER, District
Judge.*

PER CURIAM:**

David Marcus Holdren and Harriet Sue Holdren were officers of
the Darama Corporation (the "Corporation") in Michigan during the

*Chief Judge of the Eastern District of Texas, sitting by
designation.

**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should not be published.

years 1981 through 1985. In 1981 and 1982, the Corporation failed to pay over some of the employment taxes that it had withheld from its employees. Pursuant to section 6672 of the Internal Revenue Code, assessments were made against the Holdrens for their failing to pay over these withholdings.

In 1986, the Holdrens relocated to Georgetown, Texas, where Mrs. Holdren took a job as a customer service clerk in an office supply store, and Mr. Holdren worked as a free-lance computer software engineer. In February of 1988, Mrs. Holdren gave her employer a revised Form W-4, requesting that her pay be exempt from withholding for federal income tax because she did not owe any tax the previous year and did not expect to owe any tax in 1988. The IRS determined, however, that Mrs. Holdren had no reasonable basis to support her W-4, and they assessed a \$500 civil penalty against Mrs. Holdren pursuant to section 6682 of the Internal Revenue Code.

In February of 1990, the Holdrens each received "Final Notices" from the IRS demanding payment of the assessments detailed above as well as the accumulated interest on these penalties. Later, on May 18, the IRS sent the Holdrens a statutory notice of deficiency pursuant to section 6213(a) of the Internal Revenue Code stating that the Holdrens also owed additions to their federal income taxes for the year 1985 through 1988.

On July 24, 1990, the Holdrens filed this adversary proceeding in bankruptcy court against the government. The Holdrens sought a determination of their tax liability, and they prayed for damages

for unauthorized tax collection actions and unauthorized disclosure of return information. The bankruptcy court, however, entered summary judgment in favor of the government.

On March 4, 1991, the bankruptcy court issued an order granting the government partial summary judgment. On September 25, 1991, the bankruptcy court issued a second order granting summary judgment in the government's favor on its remaining claims. The Holdrens filed a notice of appeal to the district court on October 3, 1991. On January 25, 1992, however, the district court issued an order affirming the order of the bankruptcy court and entered a final judgment accordingly. The Holdrens have appealed once again.

After a careful study of the briefs and review of relevant parts of the record, we are convinced that the district court committed no reversible error in affirming the judgment of the bankruptcy court. The bankruptcy court was correct in granting summary judgment on the government's assessment of penalties that related to the Holdrens' failing to pay over the withholding taxes from the Corporation, because the Holdrens offered no evidence to rebut the presumption that the government followed the statutory procedures before levying on their property.

Furthermore, the bankruptcy court properly granted summary judgment on the government's determination of income tax deficiencies for the years 1985 through 1988, because there is no evidence to support the Holdrens' claim that the assessment was not

timely made. Finally, we find that the bankruptcy court was correct in determining (1) that the Holdrens' claims against the individual defendants were barred by sovereign immunity, (2) that it lacked subject matter jurisdiction over the Holdrens' damage claims, and (3) that Mrs. Holdren had no reasonable basis to support her filing a false withholding exemption certificate.

The district court made no error in affirming the judgment of the bankruptcy court, and the district court is therefore

A F F I R M E D.