

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20589

BROOKSTONE CORPORATION,

Plaintiff-Counter
Defendant-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Counter
Plaintiff-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 91 3467)

June 7, 1995

Before REAVLEY, KING, and WIENER, Circuit Judges.

PER CURIAM:*

We agree with the district court that the October 16, 1989 settlement package was not a firm offer that the taxpayer could accept, but rather was an invitation to the taxpayer to make an offer that would then be subject to acceptance by the Internal Revenue Service. Although there is language in the transmittal letter which, if read in isolation, might support the

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

taxpayer's position, the operative documents in the settlement package, specifically, the Forms 870-L(AD) signed by the taxpayer, were unequivocal. Part I of that Form (addressing partnership items) noted that "the undersigned [taxpayer] offers to enter into a settlement agreement" with respect to the partnership items shown on an attached schedule. It went on to provide that "[t]his offer is subject to acceptance for the Commissioner," and would "take effect as a waiver of restrictions [on assessment and collection] on the date it is accepted. Unless and until it is accepted, it will have no force and effect." The Form went on to say that "[i]f this offer is accepted for the Commissioner," the treatment of the partnership items would not be reopened absent fraud, malfeasance, or misrepresentation of fact, and ended with date and signature lines by which to indicate the "Date Accepted for Commissioner." Part II of the Form (addressing penalties) contained language that was equally clear. It began by indicating that "[t]he undersigned [taxpayer] offers to enter into a settlement agreement with respect to penalties (additions to tax) and interest and offers to waive the restriction provided in section 6213(A) of the Code" It went on to provide that the offer was "subject to acceptance for the Commissioner of the Internal Revenue Service," and would take effect as a waiver of restrictions on the date it was accepted. "Unless and until it is accepted, it will have no force or effect." Considering the language of the operative documents, the settlement package did

not become effective until it was accepted by the Internal Revenue Service.

The judgment of the district court is AFFIRMED.