

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-20105

APG 3, INC.,

Plaintiff-Appellant,

VERSUS

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(H-97-CV-3055)

December 14, 1999

Before POLITZ, GARWOOD and DAVIS, Circuit Judges.

PER CURIAM:*

After reviewing the record and considering the briefs of the parties and their oral argument, we agree with the district court that plaintiff failed to demonstrate that it filed a timely administrative claim for a tax refund. Therefore, for essentially the reasons stated by the magistrate judge in her November 6, 1998 report and recommendation, we agree that the district court did not have jurisdiction to consider this suit. Accordingly, the judgment of dismissal of the district court is modified to a judgment dismissing this suit without prejudice for lack of jurisdiction. The judgment of the district court is

AFFIRMED as modified.

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.