United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
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Lyle W. Cayce
Clerk

No. 25-30542

Norcave Properties, L.L.C.,

Plaintiff—Appellant,

versus

Internal Revenue Service,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:25-CV-398

Before Smith, Willett, and Ramirez, *Circuit Judges*.

Jerry E. Smith, *Circuit Judge*:

The IRS asserted fraud and valuation tax penalties against appellant for overclaiming charitable deductions. The district court dismissed for want of subject matter jurisdiction under the Anti-Injunction Act ("AIA"), which withdraws jurisdiction over pre-payment tax challenges, and the Declaratory Judgment Act ("DJA"), which withdraws jurisdiction over federal tax matters. Appellant insists it is entitled by the Seventh Amendment to a pre-payment jury trial on its tax penalties. During the pendency of this case, the IRS stopped pursuing its civil fraud penalty, limiting our review to the valuation penalties under 26 U.S.C. § 6662. Identifying a lack of subject matter jurisdiction in light of the AIA's and DJA's jurisdiction stripping, we affirm.

I.

In 2018, the partnership Norcave Properties, L.L.C. ("Norcave"), claimed a tax deduction after donating a conservation servitude on 321.13 acres of property. The IRS audited Norcave's filing and in 2025 issued a Notice of Final Partnership Adjustment ("FPA"), disallowing the noncash charitable deduction and imposing a civil fraud penalty, under 26 U.S.C. § 6663, as well as valuation penalties for negligence, substantial understatement of income tax, and gross-valuation misstatements under § 6662.[1]

Norcave sued in federal district court, demanding a pre-payment jury trial to contest the assessed penalties and requesting declaratory and injunctive relief. Norcave filed a parallel petition with the U.S. Tax Court for a downward readjustment of the FPA.

In district court, Norcave and the IRS cross-moved under Federal Rule of Civil Procedure 12(c) for judgment on the pleadings, the IRS seeking dismissal with prejudice for lack of jurisdiction. The district court granted the IRS's motion and dismissed for want of subject matter jurisdiction under the AIA, 26 U.S.C. § 7421, and the DJA, 28 U.S.C. § 2201.

The district court reasoned that both civil fraud penalties and accuracy-related penalties are located in Title 26, Chapter 68 of the Internal Revenue Code ("IRC") and that 26 U.S.C. § 6665(a)(2) serves as a coordinating provision, stating that "any reference in this title to 'tax' imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided" in Chapter 68. The court therefore con-

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[1] The civil fraud penalties have since been abandoned by the United States in this suit and in the underlying tax assessment, although it continues to pursue the accuracy-related penalties.

cluded that civil fraud and accuracy-related penalties counted as a "tax" under the cross-referenced AIA.[2]

II.

Regarding jurisdiction, the central question is whether, under the IRC's enforcement provisions related to accuracy and reporting requirements, the assessment of an accuracy-related tax penalty under § 6662 counts as part of tax liability, thereby falling within the jurisdiction stripping of the AIA and DJA. The short answer is yes.

The AIA, housed within the IRC at 26 U.S.C. § 7421(a), provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." The DJA, 28 U.S.C. § 2201, says that

> [i]n a case of actual controversy within its jurisdiction, except with respect to Federal taxes . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration.

Both provisions deny the subject matter jurisdiction of federal courts over the appellant's claim, which we hold is a pre-payment challenge to an assessment

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[2] The district court also observed that the following language from *National Federation of Independent Businesses v. Sebelius*, 567 U.S. 519, 544–45 (2012) ("*NFIB v. Sebelius*"), confirms the theory that "penalty" can properly refer to a "tax":

> Congress can, of course, describe something as a penalty but direct that it nonetheless be treated as a tax for purposes of the [AIA]. For example, 26 U.S.C. § 6671(a) provides that "any reference in this title to 'tax' imposed by this title shall be deemed also to refer to the penalties and liabilities provided by" Subchapter 68B of the [IRC]. Penalties in Subchapter 68B are thus treated as taxes under Title 26, which includes the [AIA].

of tax liability.

Whether Norcave's pre-collection challenge to the IRS's negligence, understatement, and gross valuation penalties under § 6662 falls within the scope of the AIA turns on whether those penalties fit into "assessment or collection" or instead into "tax" liability within the meaning of the IRC § 6665(a)(2). But first, it is worth briefly sketching the structure of partnership taxes, including with respect to additional assessments such as penalties, and the structure for lodging challenges against such taxes.

A.

Partnerships, for tax reporting, are generally pass-through entities, meaning that partners pay their income tax at the individual level.[3] Adjustments, generally meaning the identification of underpayments or deficiencies on partnership-related tax items, were historically assessed at the individual level.[4] This system "led to duplicative proceedings and the potential for inconsistent treatment of partners in the same partnership" because "the IRS had no way of correcting errors on a partnership's return in a single, unified proceeding." *United States v. Woods*, 571 U.S. 31, 38 (2013). Subsequently, Congress provided for adjustments at the entity level, including through the Bipartisan Budget Act of 2015,[5] which provides for partnership-level audits under 26 U.S.C. § 6221 and for FPAs' concluding an audit and

[3] *See, e.g.*, *Moore v. United States*, 602 U.S. 572, 585 (2024) ("Congress sometimes elects to treat an entity as a pass-through—attributing the entity's undistributed income to the shareholders or partners and then taxing the shareholders or partners on that income.").

[4] *See, e.g.,* IRS, *BBA partnership audit process*, IRS.GOV (Jan 2, 2026) (https://www.irs.gov/businesses/partnerships/bba-partnership-audit-process)

[5] Pub L. No. 114-74 (https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf).

formally assessing those adjustments under § 6233. Partnerships enjoy a push-out election to transfer the liability and penalties of an adjustment onto individual partners under § 6226.

As above, the IRS pursues penalties against individuals and entities such as partnerships for negligence and valuation misstatements under § 6662, which defines negligence as follows:

> (b) This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:
>
> (1) Negligence or disregard of rules or regulations . . . .
>
> (c) For purposes of this section, the term 'negligence' includes any failure to make a reasonable attempt to comply with the provisions of this title, and the term 'disregard' includes any careless, reckless, or intentional disregard.

Assessing penalties under this provision naturally provokes challenges, and under 26 U.S.C. § 6234, such FPA challenges are directed to the Tax Court, Court of Federal Claims ("CFC"), or the U.S. district court where the partnership's principal place of business is located.

Congress structures federal courts' jurisdiction over such challenges. It waives sovereign immunity with respect to many post-payment tax challenges or refund suits through 28 U.S.C. § 1346.[6]

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[6] In relevant part,

> (a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: (1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

Following the repeal of TEFRA in 2015 by the BBA, individual partners generally need to bring suits under the centralized regime for partnership items. *See Baxter v. United States*, Per 28 U.S.C. § 2402,[7] Congress generally mandates bench trials for tax refund suits, except with respect to individual refund suits brought under 28 U.S.C. § 1346(a). Partnership adjustment disputes, brought under 26 U.S.C. § 6234, are channeled only to bench trials in the district courts, CFC, and before the Tax Court. If the partnership opts for either the relevant district court or CFC, it is required to deposit the imputed underpayment and penalties with the IRS—but if it opts for the Tax Court, it can mount a pre-payment challenge. *See* 26 U.S.C. § 6234(b)(1).

To "'protect[] the Government's ability to collect a consistent stream of revenue' and require[] taxes to be challenged 'only after they are paid,'"[8] Congress has also enacted the AIA and carved out claims and controversies with respect to federal taxes from the DJA, *supra*. The result is to direct tax claims to post-payment refund suits, available in the CFC or district courts, or *pre-payment* suits in the Tax Court, where a taxpayer need not deposit the disputed funds before bringing his or her complaint.

B.

The district court rejected Norcave's request for injunctive and declaratory relief for lack of subject matter jurisdiction under the AIA. Now challenging that decision, Norcave advances the theory that its suit is not "for the purpose of restraining the collection or assessment of any tax." It

48 F.4th 358, 364 n.6 (5th Cir. 2022).

[7] In relevant part, "[A]ny action against the United States under section 1346 shall be tried by the court without a jury, except that any action against the United States under section 1346(a)(1) shall, at the request of either party to such action, be tried by the court with a jury." For background, other headings of § 1346 provide jurisdiction for the Tucker Act and TCA.

[8] *Holland v. Westmoreland Coal Co. (In re Westmoreland Coal Co.)*, 968 F.3d 526, 533 (5th Cir. 2020) (quoting *NFIB v. Sebelius*, 567 U.S. 519, 543 (2012)).

musters a flock of dictionary definitions for the constituent terms of the AIA, which, when substituted into the statutory language, read, "no suit for the [objective, goal or end] of [prohibiting acts of] the [official recording of a taxpayer's liability] or [obtaining payment of taxes due] shall be maintained in any court by any person[.]" 26 U.S.C. § 7421(a) (alterations supplying Norcave's definitions). On Norcave's preferred set of definitions, the reading of the statute becomes, if anything, more all-encompassing: Norcave's plain-language definitions would potentially sweep in any act with merely a goal or end related to the upstream recording of liability or the downstream collection process. As we show, this court and the Supreme Court have rejected such complaints.

Instead, the best reading of the AIA is to interpret its language in context and reflecting the terms of art of the IRC, whereunder "assessment" refers to the multi-step statutory framework of identifying a payor's tax liability and "collection" refers to the regulatorily-defined steps for the IRS to impose that liability on, and recover money from, taxpayers.[9]

As for the AIA's term "restrain," the Supreme Court has offered comparatively wider definitions, stating that the AIA "protects the Government's ability to collect a consistent stream of revenue, by barring litigation to enjoin *or otherwise obstruct* the collection of taxes." *NFIB v. Sebelius*, 567 U.S. at 543 (emphasis added). And the Court has offered comparatively narrower definitions. In *Direct Marketing*, it reversed an injunction against a state's reporting requirement under the closely parallel state-oriented Tax

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[9] *See Direct Mktg. Ass'n v. Brohl,* 575 U.S. 1, 9–11 (2015) ("'Assessment' . . . refers to the official recording of a taxpayer's liability . . . . It might also be understood more broadly to encompass the process by which that amount is calculated . . . . '[C]ollection is the act of obtaining payment of taxes due . . . . It might be understood narrowly as a step in the taxation process that occurs after a formal assessment [or widely to include withholding].") (cleaned up).

Injunction Act ("TIA"),[10] along the way defining restrain as "[t]o prohibit from action; to put compulsion upon . . . to enjoin" and adding that "a suit cannot be understood to 'restrain' the 'assessment, levy or collection' of a state tax if it merely inhibits those activities." 575 U.S. at 13, 15.

Most recently, in *CIC Services, LLC v. IRS*, 593 U.S. 209, 217 (2021), the Court interpreted the AIA as barring suits for "the purpose of restraining the assessment or collection of any tax," where courts, "inquire not into a taxpayer's subjective motive, but into the action's objective aim—essentially, the relief the suit requests." The IRS points out that the relief requested by Norcave amounts to barring the assessment and collection of taxes, including enjoining the IRS's current assertion and pursuit of valuation penalties against Norcave, bringing its objective aim within the language of *CIC Services* and the AIA.

Another point of distinction with *CIC Services* is that there, the Court confronted a notice and reporting requirement that carried a regulatory penalty, which the Court interpreted as distinct from a tax assessment, stating that "the Notice's reporting rule and the statutory tax penalty are several steps removed from each other," and ultimately held that a challenge to it did not trigger the AIA. *Id.* at 220.

Here, by contrast, the negligence and misstatement accuracy-related

[10] The TIA provides that federal district courts "shall not enjoin, suspend or *restrain the assessment*, levy *or collection of any tax* under State law." 28 U.S.C. § 1341 (emphasis added). We consider this formulation to be materially equivalent to the AIA, which in relevant part provides that "no suit for the purpose of *restraining the assessment or collection of any tax* shall be maintained in any court by any person. . . ." 26 U.S.C. § 7421(a) (emphasis added). *See* ANTONIN SCALIA & BRYAN A. GARNER, READING THE LAW: THE INTERPRETATION OF LEGAL TEXTS 204, 252 (2012) (on the Related Statutes Canon). Indeed, the Court has said that the TIA was modeled on the AIA and that it "assume[s] that words used in both Acts are generally used in the same way." *Direct Mktg.*, 575 U.S. at 8 (2015); *see also Hibbs v. Winn*, 542 U.S. 88, 100–05 (2004).

penalties fit into the assessed tax itself, as clearly set out by the language of 26 U.S.C. § 6665:

> Applicable Rules . . .
>
> (1) the additions to the tax, additional amounts, and penalties provided by this chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes; and
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> (2) any reference in this title to "tax" imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by this chapter.

Directly reading this statutory provision, one can see that except as otherwise provided, penalties and affirmative taxes as debt or liability claims on income merge into the IRC's term of art: tax. Indeed, this court has said as much: "The reference in the [AIA] to 'tax' is deemed also to refer to certain penalties, including the penalty provided for frivolous returns under § 6702." *Warren v. United States*, 874 F.2d 280, 282 (5th Cir. 1989). And so did the Supreme Court in *NFIB v. Sebelius*.

Recently, in *Harward v. City of Austin*, 84 F.4th 319 (5th Cir. 2023) (per curiam), this court applied *CIC Services* in a case seeking injunctive relief against state taxes despite the federal TIA. We carefully delineated between (1) impermissible relief restraining acts of collection and assessment and (2) permissible relief targeting the preliminary procedural step of identifying the geographic location of a piece of real estate. *See id.* at 323–34. We described the distinction as permitting relief against "the ordinance's authorization," which "itself is therefore not an act of assessment, levy, or collection" but "is no more than a prerequisite to assessment." *Id.*

Importantly, in *Harward*, this court struck two requested remedies seeking pre-payment relief against assessments asserted by the City of Austin, including "a declaration that the City's notices to [appellant] that the shoreline properties are within their taxing-unit boundaries are invalid" and a mandamus to the same effect. *Id.* at 325. We thereby have taken *CIC Services*'s "objective purpose of relief" test to bar suits against assessments and notices of assessments already in motion. For the State of Texas, this court has strictly upheld the pay-now sue-later tax structure. *Harward* applies analogously to the federal FPA.

Applying *CIC Services* and *Harward*, as to which Norcave claims that its suit "targets its constitutional right to defend against the assertion of penalties, not the IRS's right to assess taxes themselves," and insists that it targets "a separate legal mandate," it draws upon an unavailable distinction. *Cf. CIC Servs.*, 593 U.S. at 223. The objective target of Norcave's relief is a tax assessment already in motion, which we identify by "look[ing] to the face of the taxpayer's complaint." *Id.* at 218 (citing *Bob Jones Univ. v. Simon*, 416 U.S. 725, 738 (1974)).[11]

Indeed, another avenue for identifying the 'objective aim of relief' as 'restraining' the imposition of the tax penalty—part of the tax—is to recognize that Norcave's requested injunction would potentially eliminate the entire tax assessment through a jury trial, in violation of Congress's jurisdictional plan.[12] By contrast, attacking the standalone duty to report in *CIC Services* did not involve a jury trial that could ultimately declare the target of a

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[11] Some assessment is obviously taking place. The question throughout has been whether that assessment counts as a *tax* assessment.

[12] *CIC Servs.*, 593 U.S. at 218 ("[W]e have looked to the "relief requested"—the thing sought to be enjoined . . . . The [AIA] kicks in when the target of a requested injunction is a tax obligation.") (citing *Alexander v. "Americans United" Inc.*, 416 U.S. 752, 761 (1974)) (further citation omitted); *see also Bob Jones*, 416 U.S. at 736 ("The Court has interpreted the principal purpose of this [AIA] language to be the protection of the Government's need to assess and collect taxes *as expeditiously as possible* with a minimum of preenforcement judicial interference") (emphasis added) (citation omitted).

tax non-liable and thereby frustrate the revenue-collection process.[13] We are reassured of this view by the IRC's coordinating provisions,[14] which not only illuminate that a direct effect on penalties amounts to a direct effect on taxes, but potentially reach further than our holding. That would occur by sweeping in tax penalties writ broad, opening the door to the AIA's immunization of procedural steps upstream or downstream of the tax penalty provided that they are not attenuated down to the incidental status of the reporting or property-identification rules in *CIC Services* and *Harward*.

Another point of distinction with *CIC Services* is that the reporting requirement there involved a criminal overlay, which contributed to the Supreme Court's construction of it as serving a purpose removed from the assessment or collection of a tax, as well as the Court's implicit concern for a plaintiff to be required to violate the law before raising a challenge.[15] Here, by contrast, none of the avenues available to challenge an assessed tax accuracy or negligence reporting penalty requires the taxpayer to violate any criminal law, as these penalties are purely civil, and criminal tax matters are sep-

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[13] *See CIC Servs.*, 593 U.S. at 218 ("CIC's complaint asks for injunctive relief from the Notice's reporting rules, not from any impending or eventual tax obligation"); *id.* at 226 ("CIC's suit aims to enjoin a standalone reporting requirement, whose violation may result in both tax penalties and criminal punishment. That is not a suit 'for the purpose of restraining the [IRS's] assessment or collection' of a tax, and so does not trigger the [AIA].). Here, the penalty is not standalone but merges into tax liability. *Cf. id.* at 225 ("Had Congress, or the IRS acting through a delegation, imposed a tax on micro-captive transactions themselves—and had CIC then brought a pre-enforcement suit to prevent the IRS from applying that tax—the [AIA] would have kicked in. Then, CIC would have had to pay the tax and seek a refund."). We see this hypothetical at play here, where the appellant is ultimately trying to contest the tax, *pre-payment*, in front of a jury.

[14] *See* 26 U.S.C. § 6665 *ante* for accuracy-related penalties and § 6671 (equivalent).

[15] *See CIC Servs.*, 593 U.S. at 221–22 ("[V]iolation of the Notice is punishable not only by a tax, but by separate criminal penalties . . . . That fact clinches the case for treating a suit brought to set aside the Notice as different from one brought to restrain its back-up tax.").

arately prosecuted by the Department of Justice, with defendants entitled to a jury trial.[16]

As for Norcave's argument that it has no alternative forum to vindicate its alleged right: The Tax Court has already entertained a virtually identical case challenging the IRS's denial of charitable deductions for land conservation easements, where that court rejected equivalent constitutional arguments on the merits. *See Silver Moss*, 165 T.C. No. 3. The Tax Court is an alternative forum. It is not this court's fault if an independent tribunal has reached a conclusion that Norcave finds unfavorable—there is no "escape valve" for a lack of subject matter jurisdiction.[17] Additionally, because the partnership tax is assessed at the entity level but then ultimately "passed through" and levied upon individuals, there is no reason to assume that these taxpayers will never have individual access to a forum in which to challenge the FPA, provided that they use the push-out election in 26 U.S.C. § 6226.

As one final observation on the DJA, the IRS suggests that the DJA's jurisdiction stripping is, if anything, more sweeping than the AIA's. This court has held as much,[18] so we are reassured that both the DJA and AIA bar

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[16] *See, e.g., Cheek v. United States*, 498 U.S. 192 (1991) (analyzing the burden of proof for a good-faith defense in a criminal tax evasion jury trial); *see generally* U.S. CONST. amend. VI.

[17] *But see South Carolina v. Regan*, 465 U.S. 367 (1984) (offering a state plaintiff a federal forum within original jurisdiction as a last resort and adding that "the Act's purpose and the circumstances of its enactment indicate that Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy."). Subsequent courts have stated, "'Because of the strong policy animating the [AIA], and the sympathetic, almost unique facts in *South Carolina*, courts have construed the *South Carolina* exception very narrowly.'" *RYO Mach., LLC v. U.S. Dep't of Treasury*, 696 F.3d 467, 472 (6th Cir. 2012) (quoting *Judicial Watch v. Rossotti*, 317 F.3d 401, 408 n.3 (4th Cir. 2003)). Here, there is emphatically another avenue for relief.

[18] *Rivero v. Fid. Invs. Inc.*, 1 F.4th 340, 345 (5th Cir. 2021) ("[T]here is no dispute . . . that the federal tax exception to the [DJA] is at least as broad as the [AIA].") (internal

this action because its objective purpose relevant to the DJA analysis is to restrain or enjoin an assessed penalty, which counts as a tax.

III.

Norcave's complaint and requested relief target a tax within the statutory meaning of the AIA and DJA, given Congress's clear jurisdiction strip and plain command that this accuracy and reporting penalty merges into tax liability. Thus we lack jurisdiction to entertain Norcave's constitutional claim against the jurisdictional scheme assigning FPA disputes to bench trials. The judgment of dismissal is AFFIRMED.

citations omitted).