United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 19, 2026
Lyle W. Cayce
Clerk

No. 26-60162
Summary Calendar

Adolfo Sandor Montero,

Petitioner—Appellant,

versus

Commissioner of Internal Revenue,

Respondent—Appellee.

Appeal from the Tax Court, Internal Revenue Service
Agency No. 9936-24

Before Stewart, Graves, and Oldham, *Circuit Judges*.

Per Curiam:*

Adolfo Sandor Montero appeals the Tax Court's decision upholding the Commissioner of Internal Revenue's frivolous-filing penalty assessment for tax year 2018. We AFFIRM the Tax Court's judgment and imposition of a $25,000 sanction.

Montero was employed by Dell Technologies Inc. in 2018. For that year's Form 1040 income tax return, he indicated that he had no taxable wage

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

or salary income. He also attached a Form 4852[1] to his return, reporting that he received $0 in compensation and explaining that Dell's W-2 form incorrectly characterized his payments as taxable. The Commissioner determined that his return was frivolous and assessed a $5,000 penalty pursuant to 26 U.S.C. § 6702(a). Montero asked for a collection due process (CDP) hearing to contest the penalty and the intended action by the Internal Revenue Service (IRS) to levy his assets to collect the $5,000. The Commissioner upheld the action.

Montero petitioned the Tax Court for review. In a thoroughly reasoned order, the Tax Court upheld the penalty and imposed an additional $25,000 sanction pursuant to 26 U.S.C. § 6673(a)(1). Montero filed a motion to vacate, which was denied. Montero appealed.

"In a CDP case in which the underlying tax liability is at issue, we review the underlying liability de novo and the Tax Court's imposition of sanctions for an abuse of discretion." *Montero v. Comm'r*, 354 F. App'x 173, 175 (5th Cir. 2009) (per curiam) (first citing *Stearman v. Comm'r*, 436 F.3d 533, 535 (5th Cir.2006); and then citing *Jones v. Comm'r*, 338 F.3d 463, 466 (5th Cir.2003)).

Montero has quite a history of appearances before this court. *See id.* (affirming imposition of penalty and sanctions for Montero's 2003 and 2004 tax returns); *Montero v. Comm'r*, No. 24-60190, 2024 WL 4491604, at *1 (5th Cir. Oct. 15, 2024) (per curiam) (affirming imposition of penalty and sanctions for Montero's 2017 tax return), *cert. denied*, 145 S. Ct. 1964 (2025); *Montero v. Comm'r*, No. 24-60302, 2024 WL 5105532, at *1 (5th Cir. Dec. 9, 2024) (per curiam), *cert. denied*, 146 S. Ct. 180 (2025); *Montero v. Comm'r*, No. 26-60167, 2026 WL 1679030, at *1 (5th Cir. June 10, 2026) (per curiam)

[1] A substitute form for Form W-2.

(affirming imposition of penalty and sanctions for Montero's 2020 tax return).

He reurges the same arguments he has previously pressed—that he did not file a frivolous tax return because his wages from a private employer are not subject to income tax. He argues that the IRS has "offered no evidence that [his] Dell payments were connected to the federally privileged activity of 'working for or doing business with the United States.'" We have long rejected these arguments and do so again here. *See e.g.*, *Davis v. U.S. Gov't*, 742 F.2d 171, 172 (5th Cir. 1984) (per curiam) ("[T]axpayers contend that the income tax is an excise tax applicable only against special privileges and not assessable against income in general," but these arguments "are clearly frivolous and have been rejected by us time and time again."); *Parker v. Comm'r*, 724 F.2d 469, 471–72 (5th Cir. 1984) ("[I]t seems incredible that we would again be required to hold that the Constitution, as amended, empowers the Congress to levy an income tax against any source of income, without the need . . . to classify it as an excise tax applicable to specific categories of activities.").[2]

Montero also challenges the Tax Court's $25,000 sanction. Section 6673(a) authorizes the imposition of a penalty, not to exceed $25,000, when the court finds that "the taxpayer's position in such proceeding is frivolous or groundless." 26 U.S.C. § 6673(a)(1)(B). Despite repeated warnings,

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[2] To the extent Montero is asking us to reconsider or overrule *Parker*, 724 F.2d at 469, and related cases, we decline to do so, as we conclude that they are not inconsistent with controlling Supreme Court authority. *See Cain v. Transocean Offshore USA, Inc.*, 518 F.3d 295, 300 (5th Cir. 2008) ("We cannot overrule the decision of a prior panel unless such overruling is *unequivocally* directed by controlling Supreme Court precedent." (citation modified)).

Montero continues to press the same frivolous arguments.[3] The Tax Court did not abuse its discretion in imposing sanctions.

The judgment is AFFIRMED.

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[3] The Commissioner has not requested that we impose Rule 38 sanctions. *See* Fed. R. App. P. 38 ("If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee."). However, the court warns Montero that "[s]anctions on *pro se* litigants are appropriate if they were warned . . . that their claims are frivolous and if they were aware of ample legal authority holding squarely against them." *Stearman*, 436 F.3d at 538. Montero has been repeatedly advised by both the Tax Court and our court that his position is frivolous, and yet he is undeterred by the $25,000 sanctions imposed on him by the Tax Court in previous filings. Therefore, we caution Montero that additional sanctions for his frivolous appeals may be appropriate if he continues to press these meritless arguments. *See Young v. Comm'r*, 551 F. App'x 229, 231 (5th Cir. 2014) (per curiam) (granting a motion for $8,000 in sanctions under Rule 38); *Lange v. Comm'r*, 748 F. App'x 635, 636 (5th Cir. 2019) (per curiam) (same); *Wallis v. Comm'r*, 203 F. App'x 591, 594 (5th Cir. 2006) (per curiam) (same).