

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-5224

September Term, 2000

00cv00272

Filed On: February 2, 2001 [573562]

Michael Wayne Mason,
Appellant

v.

United States of America and Internal
Revenue Service,
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Sentelle, Henderson, and Rogers, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for a published opinion. See Fed. R. App. P. 36; D.C. Cir. Rule 36(b). It is

ORDERED AND ADJUDGED that the district court's order filed May 16, 2000, be affirmed for the reasons stated in the accompanying memorandum.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

MEMORANDUM

The district court properly dismissed this suit with prejudice. Appellants' claim that their lawsuit is not one for a taxpayer refund because they are not federal taxpayers is frivolous. See, e.g., *United States v. Hilgford*, 7 F.3d 1340, 1342 (7th Cir. 1993) (stating that the argument that an individual is a sovereign citizen of a state who is not subject to the jurisdiction of the United States and not subject to federal taxing authority is frivolous). Because appellants seek a refund of the money and property that they allege the Internal Revenue Service illegally collected from them, the suit is one for a tax refund.

Before a taxpayer may bring a civil action in district court seeking a refund of federal income taxes that allegedly have been erroneously assessed or collected, the taxpayer must meet certain jurisdictional prerequisites. The taxpayer must timely file an administrative claim for a refund. See 26 U.S.C. § 7422(a); see also *Commissioner v. Lundy*, 516 U.S. 235 (1996) (timely filing of a refund claim is a jurisdictional prerequisite to bringing suit). Because appellants failed to comply with this requirement, the district court lacked jurisdiction to entertain any claim for a refund.

To the extent appellants allege the collection was unauthorized, their remedy would be a suit under 26 U.S.C. § 7433(a). That statute currently provides that a taxpayer may file suit in district court when an officer of the Internal Revenue Service "in connection with any collection of Federal tax . . . recklessly or intentionally disregards any provision of this title." Before 1988, there was no specific waiver of sovereign immunity to bring a suit for unauthorized collection. In 1988, the Congress enacted 26 U.S.C. § 7433 to be applied prospectively. See Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, § 6421(d), 102 Stat. 3342 (1988). Because the statute does not apply to Internal Revenue Service actions occurring before 1988, appellants would only be entitled to bring suit for any action that took place after the statute's effective date of November 10, 1988. Moreover, there is a two-year statute of

limitations, which begins to run from the date "the right of action

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accrues." See 26 U.S.C. § 7433(d)(3). Appellants' home was sold by public auction on November 22, 1996. Appellants filed their complaint more than two years after May 27, 1997, the date they were evicted from their home, the last action under which a claim could possibly accrue. Accordingly, the district court properly dismissed the complaint as time-barred.