

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-1022

September Term, 2019

Filed On: January 31, 2020

WILLIAM MARK SCOTT,
APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE,
APPELLEE

On Appeal from the Order and
Decision of the United States Tax Court

Before: GARLAND, *Chief Judge*, and TATEL and MILLETT*, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States Tax Court and on the briefs filed by the parties. The Court has afforded the issues full consideration and has determined they do not warrant a published opinion. See FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). It is

ORDERED AND ADJUDGED that the Tax Court’s October 29, 2018 order granting summary judgment be affirmed. The Tax Court properly concluded that, because the administrative record does not indicate that the IRS initiated an “administrative or judicial action” and collected “tax proceeds” based on the appellant’s tip, he was not entitled to a whistleblower award. *Simmons v. Comm’r*, 523 F. App’x 728, 730 (D.C. Cir. 2013); see I.R.C. § 7623(b).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk

* A separate dissenting statement by Circuit Judge Millett is attached.

MILLETT, *Circuit Judge*, dissenting: I do not disagree with the majority’s conclusion that the administrative record before us does not indicate that Scott’s whistleblower information led to the type of recovery that would support a whistleblower award. My concern, instead, is that the Tax Court entered summary judgment even though Scott’s motion to compel disclosures that might have materially changed the content of the administrative record was still pending, *see Whistleblower One 10683-13W v. Commissioner*, 145 T.C. 204, 206 (2015), and even though the Tax Court recognized that the administrative file from the Whistleblower Office is “not always correct[,]” Transcript of S.J. Hearing at 54:23–54:25 (May 21, 2018). Importantly, the Tax Court never ruled that Scott’s motion to compel lacked merit in any way. The court just denied the motion as “moot” two months *after* summary judgment. That is not how summary judgment is supposed to work.