

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-1072

September Term, 2021

USTC-14095-18

Filed On: October 22, 2021

Norman Douglas Diamond and Zaida Golena
Del Rosario,

Appellants

v.

Commissioner of Internal Revenue,

Appellee

ON APPEAL FROM THE UNITED STATES TAX COURT

BEFORE: Tatel, Rao, and Walker, 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. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing, and the motion to dispense with the appendix, it is

ORDERED AND ADJUDGED that the Tax Court’s order filed November 9, 2020, granting summary judgment to the Commissioner of Internal Revenue and denying appellant’s first motion to compel discovery, and its order filed November 20, 2020, denying appellant’s second motion to compel discovery, be affirmed. Appellant has not shown that the Tax Court abused its discretion in granting the Commissioner’s motion for summary judgment. See 26 U.S.C. § 6015(f); Mitchell v. Comm’r of Internal Revenue, 292 F.3d 800, 807 (D.C. Cir. 2002). Specifically, appellant has not demonstrated any error in the Tax Court’s determinations that he was ineligible for relief under § 6015(f) for tax years 2002, 2006, and 2008, because he did not file a joint tax return with his spouse, and that he was not “liable for any unpaid tax or deficiency” for tax years 2005 and 2007. See 26 U.S.C. § 6015(f)(1)(A). Moreover, the Tax Court properly concluded that appellant’s arguments regarding his entitlement to a refund for tax year 2005 are not pertinent to his eligibility for innocent spouse relief.

Likewise, appellant has not demonstrated that the Tax Court abused its discretion in denying his motions to compel discovery. Finally, the court declines to consider the arguments presented in the lodged brief of intervenor-appellant, which address an order of the Tax Court filed February 10, 2021. That order is not properly

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on appeal, and, in any event, any appeal of that order would be untimely. See 26 U.S.C. § 7483 (notice of appeal must be filed within 90 days of entry of Tax Court order or judgment). It is

FURTHER ORDERED that the motion to dispense with the appendix be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk