In the United States Court of Federal Claims

NOT FOR PUBLICATION
No. 03-91T
(Filed October 26, 2006)

* *

ROBERT E. LAWLER and *
LAVONA SUE LAWLER, *
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Plaintiffs, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

* *

MEMORANDUM OPINION AND ORDER

Doctor and Mrs. Lawler, acting *pro se*,[1] brought this action seeking a refund of partnership taxes that were paid via an IRS levy of funds contained in Mrs. Lawler's IRA account. The government moved to dismiss, in part, for lack of jurisdiction and moved for summary judgment. Plaintiffs filed a cross-motion for summary judgment. For the reasons stated below, the Court grants the government's motion and denies Mrs. Lawler's cross-motion.

I. BACKGROUND

The facts in this matter are undisputed. Plaintiffs filed a joint tax return for tax year 1990. Second Am. Compl. ("Compl.") Ex. D. Their return included a deduction in the amount of $215,470 related to Dr. Lawler's involvement as a general partner in Vietnam Friendship Run, Ltd. ("VFR"), a partnership formed to produce and distribute films in Vietnam. Compl. at 3; Ex. D. In March 1993, the IRS concluded an audit of plaintiffs' tax return for tax year 1990. Compl. at 5. As a result of the audit, the IRS identified changes to plaintiffs' 1990 tax return. *Id.* Ex. C. Plaintiffs agreed to these changes, as acknowledged by their signature on IRS Form 1902-B. Based upon the agreed changes, plaintiffs received a bill from the IRS for $7,527.57. *Id.* at 5. Plaintiffs paid this adjustment and do not seek a refund of this amount.

On November 15, 1993, the IRS notified Dr. Lawler that it had begun an audit of VFR. Def.'s Mot. Ex. 8. Stan Cottrell, VFR's Tax Matter Partner ("TMP"), signed two subsequent

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[1] Doctor Lawler passed away during the course of the litigation; Mrs. Lawler continues to proceed *pro se*.

IRS 872-P forms extending the statute of limitations to June 30, 1995. *Id*. Exs. 9-10. On March 27, 1995, the IRS issued a Final Partnership Administrative Adjustment ("FPAA") regarding VFR. *Id*. Exs. 11-12. The IRS sent plaintiffs an explanation of changes to their 1990 tax return stemming from the FPAA on March 6, 1996. *Id*. Ex. 13. On April 1, 1996, the IRS notified plaintiffs that they owed an additional $102,582.59 because of the disallowed partnership deductions that they claimed on their 1990 tax return. *Id*. Ex. 14.

On December 3, 1996, the IRS filed a Notice of Federal Tax Lien with the Clerk of Circuit Court, Brevard County, Titusville, Florida. *Id*. Ex. 2. On May 13, 1997, the IRS issued a Notice of Levy to SunTrust Securities, Inc. ("SunTrust"), the holder of Mrs. Lawler's IRA, for $123,870.61 -- the assessment of $102,594.59 plus statutory additions of $21,276.02. *Id*. Ex. 3. SunTrust paid this amount in full. Compl. at 7. Plaintiffs filed a refund claim with the IRS on October 10, 1998. *Id.* at 8. They also filed subsequent requests, all of which were denied by February 11, 2002. *See* Def.'s Mot. Ex. 1 (detailing history of plaintiffs' contact with the IRS for tax period 1990). Plaintiffs filed suit in this Court on January 15, 2003.

II. DISCUSSION

A. The Assessment

Plaintiffs do not dispute the $7,527.57 correction that was identified by the IRS, but the parties disagree over the legal effect of Form 1902-B. Plaintiffs claim that by signing Form 1902-B, they prevented the IRS from making further assessments. Plaintiffs repeatedly refer to Form 1902-B as a contract. *See, e.g.*, Compl. at 11 (describing it as a "binding contract"); Resp. to Def.'s Mot. at 1 (contending "the I.R.S. offered a settlement which the Plaintiffs agreed to, signed, and paid, thereby creating a contract which the Plaintiffs relied on, and had a right to rely on" (emphasis omitted)).

Plaintiffs are mistaken in their contention that Form 1902-B precluded the subsequent adjustment. Plaintiffs did not execute a closing agreement with the IRS in accordance with 26 U.S.C. § 7121. A closing agreement requires the use of IRS Form 866 or 906. 26 C.F.R. § 601.202(b); *see also Levin v. Commissioner*, 59 T.C.M. (CCH) 526 (1990) ("It is clear that Form 1902-B is not a closing agreement under section 7121 . . . . On its face, it does not even purport to be a closing agreement."). But even if Form 1902-B were an agreement with the IRS, it was only an agreement regarding non-partnership income and would not preclude the additional assessment of the partnership items arising from the VFR audit.

The Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), Pub. L. No. 97-248, 96 Stat. 324 (codified as amended in scattered sections of 26 U.S.C.), shifted the audit of partnerships from the individual partner level to that of the partnership as a whole. *See* 26 U.S.C. § 6221. The 1993 assessment concerned non-partnership items -- the partnership items were not reviewed by the IRS until the VFR audit. Plaintiffs claim that the statute of limitations period expired before the IRS assessed the additional taxes arising from the VFR audit. The IRS began the VFR audit in November of 1993, a month before the three-year statute of limitations

expired. Mister Cottrell, VFR's Tax Matter Partner, signed an IRS Form 872-P that extended the statute of limitations period to December 1994. Def.'s Mot. Ex. 9. In March 1994, Mr. Cottrell signed another Form 872-P that further extended the statute of limitations period to June 30, 1995. *Id.* Ex. 10. On March 27, 1995, well within the extended time period agreed to in the most recent Form 872-P, the IRS issued the FPAA. *Id.* Ex. 11.

Plaintiffs argue that the statute of limitations was not waived because Dr. Lawler did not consent to such a waiver. Compl. at 6; Pl.'s Resp. to Def.'s Mot. at 6. The tax code, however, specifically allows the TMP to extend the statute of limitations period on behalf of the other partners. 26 U.S.C. § 6229(b)(1)(B). The issuance of the FPAA further extends the statute of limitations by at least one year. *See id.* § 6229(d). Thus, the additional assessment was filed before the expiration of the limitations period.

Congress, in enacting TEFRA, created a very short time period within which a taxpayer can challenge the FPAA. For ninety days after the issuance of the FPAA, the TMP may challenge it in this Court, the district court, or the Tax Court. *Id*. § 6226(a). If the TMP does not bring such a challenge within ninety days, any notice partner may do so in the following sixty days. *Id*. § 6226(b). The FPAA was issued on March 27, 1995. Def.'s Mot. Ex. 11. Plaintiffs filed the present action in this Court on January 15, 2003, well outside the time established by TEFRA. Thus, any challenge that plaintiffs could have brought against the FPAA is barred by the statute of limitations.

B. The Levy of the IRA Account

Along with challenging the underlying assessment, plaintiffs challenge the levy of Mrs. Lawler's IRA account. Plaintiffs make three arguments: (1) the IRS cannot levy Mrs. Lawler's IRA funds because she was not a partner in VFR. Compl. at 13; (2) the levy violates Florida law. *Id.* at 15-17; and (3) the levy violates the procedures set forth in the IRS handbook. *Id.* at 16. All three arguments are insufficient as a matter of law.

Plaintiffs filed a joint tax return, making them each jointly and severally liable for all tax assessments arising from the return. 26 U.S.C. § 6013(d)(3); *see also* § 6231(a)(2)(b) (extending partnership tax liability to anyone whose income is directly or indirectly determined by inclusion of the partnership items); 26 C.F.R. § 301.6231(a)(2)-1(a)(1) (providing that "a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as a partner"). By filing jointly, Mrs. Lawler accepted responsibility for Dr. Lawler's partnership tax liabilities.

Plaintiffs argue that Mrs. Lawler's IRA account is protected under Florida law. But regardless of Florida law and the proper interpretation thereof, federal laws govern the ability of the IRS to levy funds, superseding any contrary state law. *See* U.S. CONST. art. VI, cl. 2 ("This Constitution, and the laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . ."); *see also United States v. Nat'l Bank of Commerce*, 472 U.S. 713, 722 (1985) (holding that federal law, not state law, determines federal tax

consequences). The IRS's authority to issue levies is described in section 6631 of Title 26 of the United States Code. Exemptions to the levy power are listed in section 6334(a). As IRA accounts are not listed amongst the exceptions, they are not exempt from levy.

To the extent that plaintiffs rely upon the Internal Revenue Manual as a source of law, *see* Compl. at 12, they are mistaken. *See Ghandour v. United States*, 37 Fed. Cl. 121, 126 n.14 (1997) ("We note that the IRM '[does] not have the force and effect of law'" (citing *United States v. Horne*, 714 F.2d 206, 207 (1st Cir. 1983))). The IRS manual is solely for internal administrative use and does not confer any judicially enforceable rights upon the taxpayer. *See id*.

In any event, the Court of Federal Claims generally lacks jurisdiction over challenges to IRS levies. *Standifird v. United States*, 32 Fed. Cl. 731, 734 (1995).[2] While this Court can hear claims for tax refunds, challenges to the method of collection -- and specifically to the use of liens -- must be brought in district court. *See* 26 U.S.C. §§ 7432-7433.

III. CONCLUSION

Defendant's motion to dismiss, in part, for lack of jurisdiction and motion for summary judgment is **GRANTED**. Because the statute of limitations bars plaintiffs from challenging the FPAA, summary judgment in favor of the government is proper. Because the Court lacks jurisdiction over plaintiffs' claim that the levy of Mrs. Lawler's IRA account was an improper collection action, the claim must be dismissed. For these same reasons, Mrs. Lawler's cross-motion for summary judgment is **DENIED**. The Clerk is **DIRECTED** to enter judgment for defendant. No costs shall be awarded.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge

[2] The present matter does not pose the question whether a challenge to an IRS levy, alleging the violation of federal law, would come within our Court's jurisdiction over illegal exaction claims. *See Aerolineas Argentinas v. United States*, 77 F.3d 1564, 1572-73 (Fed. Cir. 1996). The Court takes no position on that question at this time.