UNITED STATES COURT OF FEDERAL CLAIMS

Jerome Frank Harris v. United States

Jerome Frank Harris v. United States, 33 Fed. Cl. 470 (1995) (United States Court of Federal Claims 1995) · No. No. 94-753 T

SUMMARY

In Harris v. United States, the Court of Federal Claims dismissed a pro se taxpayer's refund suit for lack of subject matter jurisdiction. The court held that under the Flora full-payment rule, a taxpayer must pay the full assessed tax before suing for a refund, and the IRS Certificate of Assessments and Payments is presumptive proof of a valid assessment. The court also held that 26 U.S.C. § 7422 requires filing an administrative refund claim with the IRS before bringing suit, and plaintiff failed to do so for certain years.

CASE DETAILS

COURT	United States Court of Federal Claims
WRITING FOR THE COURT	Tidwell, Judge
JURISDICTION	Federal
DOCKET	No. 94-753 T
DISPOSITION	dismissed
PROCEDURAL POSTURE	On defendant's motion to dismiss for lack of subject matter jurisdiction.
STANDARD OF REVIEW	On a motion to dismiss for lack of subject matter jurisdiction under RCFC 12(b)(1), the court accepts undisputed factual allegations as true and may decide disputed jurisdictional facts; the non-moving party bears the burden of establishing jurisdiction.
PRECEDENTIAL VALUE	published
PARTIES	Jerome Frank Harris v. United States

TOPICS

tax · civil procedure · motions to dismiss

PRACTICE AREAS

Tax Law · Civil Procedure

QUESTIONS PRESENTED

1. Whether the court has subject matter jurisdiction over the 1985-1992 tax years given plaintiff's failure to pay the full assessed tax.
2. Whether the court has subject matter jurisdiction over the 1983, 1984, and 1993 tax years where plaintiff did not file a refund claim with the IRS.

HOLDINGS

1. A taxpayer must pay the full amount of all assessed tax before challenging its correctness by a suit for refund; failure to do so deprives the court of jurisdiction.
2. Section 7422 requires that a claim for refund be duly filed with the IRS before maintaining a suit for refund; failure to do so deprives the court of jurisdiction.

KEY QUOTATIONS

> *"It is a prerequisite to suit, however, that the assessed tax liability has been fully paid. In Flora v. United States, 357 U.S. 63, aff'd on reh'g, 362 U.S. 145 (1960), a tax refund suit was initiated in the district court before full payment of the tax had been made. The Supreme Court held that 28 U.S.C. section 1346(a)(1), correctly construed, requires a taxpayer to pay the full amount of all assessed tax before he may challenge its correctness by a suit for refund."* (95-2229)

> *"No suit or proceeding shall be maintain in any court for the recovery of any internal revenue tax alleged ...until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof."* (95-2230)

FACTUAL BACKGROUND

Plaintiff Jerome Frank Harris was an employee of Jim Smith-Hoover Fine Metal & Lighting from 1983 to 1993. He sought a refund of income and employment taxes allegedly withheld from his paychecks during those years. The IRS Certificate of Assessments and Payments showed that plaintiff owed taxes for 1985-1992 and had not fully paid them. Plaintiff claimed to have filed 1040X amended return forms for a refund but provided no evidence of payment or timely refund claims.

PROCEDURAL HISTORY

Plaintiff filed a complaint seeking refund of taxes for 1983-1993. The court previously dismissed a claim for $40,000 'damnum absque injuria'. Defendant moved to dismiss for lack of subject matter jurisdiction on grounds of failure to pay full tax assessment and failure to file a refund claim with the IRS.

DISPOSITION

dismissed

CASES CITED

- Reynolds v. Army and Air Force Exch. Serv., 846 F.2d 746 (Fed. Cir. 1988)

- Hedman v. United States, Hedman v. United States, 15 Cl. Ct. 304 (1988)
- Cedars-Sinai Medical Center v. Watkins, 11 F.3d 1573 (Fed. Cir. 1993)
- Estate of Akin v. United States, 31 Fed. Cl. 89 (1994)
- Land v. Dollar, 330 U.S. 731 (1947)
- Flora v. United States, 357 U.S. 63 (1958)
- Rocovich v. United States, 933 F.2d 991 (Fed. Cir. 1991)
- Slodov v. United States, 436 U.S. 238 (1978)
- Rohmann v. United States, 25 Cl. Ct. 274 (1992)