UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Buck v. United States

972 F.2d 1339 (5th Cir. 1992) · No. 91-2973 · Decided August 5, 1992

SUMMARY

The Bucks filed an unsigned federal income tax return, asserting Fifth and First Amendment objections. The IRS assessed a $500 penalty under 26 U.S.C. § 6702 for filing a frivolous return. The district court granted summary judgment for the government, and the Fifth Circuit dismissed the appeal as frivolous, imposing sanctions.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Jolly; Davis; Smith
JURISDICTION	Federal
DECIDED	August 5, 1992
DOCKET	91-2973
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from summary judgment in favor of the United States in a suit to recover a penalty assessed for filing a frivolous tax return.
PRECEDENTIAL VALUE	Published
PARTIES	Pitman A. Buck, Jr. and Nellwyn A. Buck v. United States of America

TOPICS

tax penalties · tax · constitutional law · summary judgment · appellate procedure

PRACTICE AREAS

Tax · Constitutional Law · Civil Procedure · Appellate Procedure

QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment for the United States on the § 6702 penalty for filing a frivolous tax return.
2. Whether the appeal is frivolous and sanctions should be awarded.

HOLDINGS

1. The failure to sign a tax return under penalty of perjury is a frivolous position justifying a penalty under § 6702.
2. The appeal is frivolous because the claims have been authoritatively rejected, and sanctions of $1,500 are awarded.

KEY QUOTATIONS

> *“Under penalties of perjury, I declare that I have examined this return, and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.”*

> *“precludes the IRS from judging the "substantial correctness" of the return because the required "information" that the return has been verified under "penalty of perjury" is absent.”*

> *“there is no conceivable legal foundation for striking the jurat.”*

> *“a person of ordinary common sense could understand the conduct that is prohibited or subject to penalty.”*

> *“the maintenance of a functional federal tax system is a sufficiently important governmental interest to justify incidental regulation of First Amendment rights.”*

> *“a frivolous appeal is an appeal in which "the result is obvious or the arguments of error are wholly without merit."”*

FACTUAL BACKGROUND

The Bucks filed a 1988 Form 1040 without signing the jurat, instead writing 'Fifth Amendment' and referring to cover letters and opinion letters claiming that filing a return is voluntary. The IRS assessed a $500 penalty under 26 U.S.C. § 6702 for filing a frivolous return. The Bucks paid 15% of the penalty and filed an administrative claim for refund, which was denied. They then sued for refund and abatement.

PROCEDURAL HISTORY

The Bucks filed a suit for refund of partial payment of penalty and abatement of remainder. The district court granted summary judgment for the government. The Bucks appealed.

DISPOSITION

dismissed

CASES CITED

- Mosher v. I.R.S., 775 F.2d 1292 (5th Cir. 1985)
- Anderson v. United States, 754 F.2d 1270 (5th Cir. 1985)
- Borgeson v. United States, 757 F.2d 1071 (10th Cir. 1985)
- Lucas v. Pilliod Lumber Co., 281 U.S. 245 (1930)
- United States v. Lee, 455 U.S. 252 (1982)

- Montgomery v. United States, 933 F.2d 348 (5th Cir. 1991)
- Coghlan v. Starkey, 852 F.2d 806 (5th Cir. 1988)