

03-1034 ESTATE OF KANTER, ET AL. V. COMMISSIONER OF INTERNAL REVENUE

Decision below: 337 F.3d 833 (7th Cir. 2003)

QUESTIONS PRESENTED:

The Tax Court keeps secret, even from the reviewing courts of appeals, the findings of fact and credibility judgments of its special trial judges. By law, these trial judges are required to file reports containing findings of fact and opinion with the Tax Court. Tax Ct. R. 183(b). By law, these findings of fact "shall be presumed to be correct" and the Tax Court is required to give "due regard" to the circumstance that the trial judge "had the opportunity to evaluate the credibility of witnesses." Tax Ct. R. 183(c). Nonetheless, the Tax Court overturns the factual findings, including the credibility findings, of its trial judges without the record revealing those findings or that the Tax Court has overturned them. Secret trial judge reports preclude the courts of appeals from determining whether the Tax Court has complied with the legal constraints described above. Secret trial judge reports also preclude the courts of appeals from reviewing a Tax Court decision on the basis of the entire record on which that decision in fact rests. Federal statutes require that "all reports of the Tax Court * * * shall be public records." 26 U.S.C. § 7461(a). The questions presented are:

1. Whether the due process clause or the governing federal statutes require that the courts of appeals be able to review Tax Court decisions on the basis of the complete record, including the trial judge's findings of fact that, by law, the Tax Court must presume to be correct.
2. Whether Tax Court Rule 183 requires judges of the Tax Court to uphold findings of fact and credibility judgments made by their trial judges unless those findings are "clearly erroneous," as the D.C. Circuit has held, or are those findings and credibility judgments entitled to no deference at all, as the Seventh Circuit held in this case.

03-184 BALLARD V. COMMISSIONER OF INTERNAL REVENUE

Decision below: 321 F.3d 1037 (11th Cir. 2003)

QUESTIONS PRESENTED:

In this case, the trial was conducted by a Special Trial Judge employed at will by the Tax Court. The Special Trial Judge was required to create a report of factual and legal findings, but his original report has never been made available to the parties, the public, or the reviewing Article III courts. Instead, his superiors on the Tax Court either overruled his factual findings or persuaded him to change his mind, thus creating a factual finding of tax fraud. This entire process took place off the record, and came to light only in a subsequent conversation between two Tax Court judges and a counsel for another party.

The questions presented are:

1. Whether this secretive process is consistent with the Due Process Clause or the right to effective Article III review?
2. Whether this secretive process is consistent with 26 U.S.C. § 7482, which provides that Article III courts must review Tax Court decisions just as they would decisions of a U.S. district court?

Cert. Granted 4/23/03

Consolidated for one-hour of oral argument.