

Original

No. _____

(5th Cir. No. 18-60135)

(U.S. Tax Court 21360-17)

IN THE SUPREME COURT OF THE UNITED STATES

BILLY R. MELOT,
PETITIONER - APPELLANT

VS.

COMMISSIONER OF INTERNAL REVENUE SERVICES,
RESPONDENT - APPELLEE

PETITION FOR WRIT OF CERTIORARI
U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

Billy R. Melot,
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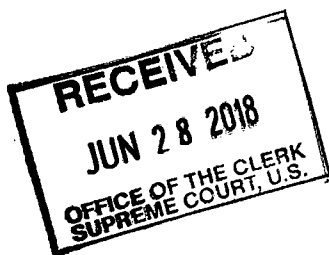


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QUESTIONS PRESENTED FOR REVIEW

- 1) Whether the 5th Circuit Decision is an intervening controlling Precedent that affects the Justiciability of Appellant's claims:
- 2) That without the Issuance of a GVR, Appellant would be deprived of the right to have an Appellate Court to consider the Merits of the claims on Preclusion.

PARTIES TO THE PROCEEDINGS

All parties to the action are contained within the caption.

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS

AND ORDERS ENTERED IN THE CASE BY THE COURTS

Melot v. Commissioner (U.S. Tax Court No. 21360-17)

Melot v. Commissioner (Fifth Circuit No. 18-60135)

JURISDICTION

Appellant, Billy R. Melot, request this Court to issue its Certiorari to the Fifth Circuit Court of Appeals from the denials, as Follows:

On October 3, 2017, Appellant Filed his Petition in the Tax Court, and;

On January 25, 2018, the Tax Court issued an unpublished Order dismissing the Petition. (Attached as Ex. A).

On February 22, 2018, Appellant timely Filed a Notice of Appeal to the 5th Circuit Court.

On March 27, 2018, the 5th Circuit Court dismissed Appellant's Appeal for Failing to pay the Filing Fees, and;

On April 12, 2018, Appellant Filed a Motion to reinstate, claiming indigence, and the 5th Circuit Court reinstated the Appeal on that same date.

On May 10, 2018, the 5th Circuit Court entered its Order dismissing Appellant's Appeal (Order Attached as Exh. B).

This Petition is timely filed on or before August 10, 2018.

Appellant request that this Court enter an Order Granting, vacating, and Remanding (GVR) the Petition because the 5th Circuit's determination was in error when it denied Appellant's Appeal by Dismissing it for improper Venue and ultimately Failing to transfer it to the 10th Circuit Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional and Statutory Provisions involved herein concern the application of the United States Codes, the misapplication of law, and improperly failing to transfer the case to the 10th Circuit Court.

STATEMENT OF THE CASE

This case involves Appellant's challenges to tax liabilities in which were reduced by a civil judgment by an administrated CDP hearing. At Tax Court proceeding, the commissioner alledged that the Tax Court lacked Jurisdiction and moved to dismiss the Petition. Appellant Filed a Response, claiming Jurisdiction and attached proper documentation supporting his claim. Although the Tax Court has limited Jurisdiction by extent of statute, Appellant's claims fell within the scope of them.

On January 25, 2018, the Tax Court issued an unpublished Order dismissing Appellant's case for lack of Jurisdiction.

On February 22, 2018, Appellant timely Filed a notice of Appeal to the 5th Circuit Court.

On May 10, 2018, the 5th Circuit Court dismissed the Appeal and it's that Order on Appeal herein. (Order Attached as Exh. B).

ALLOWANCE OF THE WRIT

- I. The 5th Circuit Court Erred by Failing to Transfer the Case to Their Sister Court, 10th Circuit Court.

Section 7482(b) of the United States Code governs venue for Appeals from decisions of the Tax Court. In relevant part, it provides that, in the case of individual taxpayers, decisions in deficiency and

CDP proceedings may be reviewed by the United States Court of Appeals for the Circuit in which is located the taxpayer's "legal residence." I.R.C. § 7482(b)(1)(A),(G). Residence is determined at the time of the Taxpayer's petition to the Tax Court. I.R.C. § 7482(b)(1). In the case at bar, Appellant Filed his Petition to the Tax Court on October 3, 2017. At that time his "Legal Residence" was and is at all times mentioned herein, in Texas, as Appellant was and is currently confined at the Federal Correctional Institution La Tuna in Anthony, Texas. <https://www.bop.gov/inmateloc/>. The commissioner alleges in their Motion to Dismiss, filed on April 23, 2018, that Appellant's "Legal Residence" is located in Hobbs, New Mexico because that is where he receives his mail. This claim is meritless because Appellant also receives his mail in Texas and the Court recognizes that Appellant's physical appearance is in Texas, his legal place of confinement. One's mailing address does not substantiate his Residence. In addition, I.R.C. § 7482(b)(2) permits a decision of the Tax Court to be reviewed "by any United States Court of Appeals." In this case, by the commissioner not objecting to the Filing of the Petition in the 5th Circuit Court, it waived any stipulation.

By such, the Tax Court's decision was in error and the 5th Circuit Court is the correct venue to proceed on Appeal. In the event that the 5th Circuit Court determined that the case should proceed in their sister court (10th Circuit Court), then under 28 U.S.C. § 1631, the 5th Circuit should have transferred the Appeal to cure a lack of Jurisdiction, but Failed to. The matter should be remanded with instructions to reinstate for further proceedings.

II WITHOUT A GVR, APPELLANT WOULD BE DEPRIVED OF THE RIGHT TO FULLY LITIGATE HIS CLAIMS

Appellant is entitled to Fully litigate all claims. In this case, he was precluded of such only based that the commissioner alleged that Appellant's Legal Residence was dictated by a P. O. Box in which he received a very limited amount of his mail, when the Law is clear that "Legal Residence" is determined at the time taxpayer's petition to the Tax Court is Filed. I.R.C. 7482(b)(1) which in this case is Texas in which the 5th Circuit Court has Jurisdiction. In addition, the 5th Circuit Court's Failed to transfer the case to the 10th Circuit Court to cure any lack of Jurisdiction. Dornbusch v. Commissioner, 860 F.2d 611, 615 (5th Cir. 1988). If a GVR is not issued, Appellant will arguably be forever barred from having his claims fully litigated and

properly considered on Appeal. This case presents a circumstance in which "The GVR Order can improve the Fairness and Accuracy of Judicial outcome which at the same time serving as a cautious and deferential alternative to summary reversal in cases whose precedential significance does not merit review. Laurence v. Charter, 516 U.S. 163 at 186 (1996).

CONCLUSION

The 5th Circuit determination was in error when it misapprehended the Facts of the case and misapplied the Law in determining proper venue and Appellant's Legal Residence, and Failed to cure such by not transferring the case. This matter should be remanded for further proceedings and a GVR should be issued.

Respectfully Submitted,



Billy R. Melot