

03-184 BALLARD V. COMMISSIONER OF INTERNAL REVENUE

DECISION BELOW: 321 F3d 1037

LOWER COURT CASE NUMBER: 01-17249, 01-17251, 01-17253, 01-17255, 01-17256, 01-17257

QUESTION 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?

CONSOLIDATED WITH 03-1034 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 4/26/2004