

03-1034 ESTATE OF KANTER V. COMMISSIONER OF INTERNAL REVENUE

DECISION BELOW: 337 F3d 833

LOWER COURT CASE NUMBER: 01-4316, 01-4317, 01-4318, 01-4319, 01-4320, 01-4321, 03-4322, 02-1220

QUESTION 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.

CONSOLIDATED WITH 03-184 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 4/26/2004