

Onyango v. Comm'r

United States Court of Appeals for the District of Columbia Circuit

March 22, 2016, Filed

No. 14-1280 Consolidated with 14-1288

Reporter

2016 U.S. App. LEXIS 5358; 117 A.F.T.R.2d (RIA) 1079

Eric Onyango, Appellant v. Commissioner of Internal Revenue Service, Appellee

Notice: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [*1] ON APPEAL FROM THE UNITED STATES TAX COURT. USTC-27788-11, UTSC-19081-12L. [Onyango v. Comm'r, 142 T.C. 425, 2014 U.S. Tax Ct. LEXIS 28 \(2014\)](#)

Core Terms

notice, reasonable diligence, abuse of discretion, prior to trial, reconsideration, newly

Counsel: Eric Onyango, Petitioner - Appellant (14-1280), Pro se, Chicago, IL.

For Commissioner of Internal Revenue Service, Respondent - Appellee (14-1280): Janet Arlene Bradley, Jonathan S. Cohen, Attorney, U.S. Department of Justice, Tax Division, Appellate Section, Washington, DC.

Eric Onyango, Appellant (14-1288), Pro se, Chicago, IL.

For Commissioner of Internal Revenue Service, Appellee (14-1288): Janet Arlene Bradley, Jonathan S. Cohen, Attorney, U.S. Department of Justice, Tax Division, Appellate Section, Washington, DC.

Judges: BEFORE: Tatel, Brown, and Griffith, Circuit Judges.

Opinion

JUDGMENT

Upon consideration of the record from the United States Tax Court and on the briefs filed by the parties, see Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j), it is

ORDERED AND ADJUDGED that the Tax Court's orders of June 24, 2014, and September 8, 2014, be affirmed. "The court must give great deference to the Tax Court's determination pertaining to the credibility of witnesses." [106 Ld. v. C.I.R., 684 F.3d 84, 92, 401 U.S. App. D.C. 288 \(D.C. Cir. 2012\)](#) (quoting [Pasternak v. Commissioner, 990 F.2d 893, 900 \(6th Cir. 1993\)](#)). Appellant has not shown that the Tax Court clearly erred in discrediting portions of his trial testimony and finding that he "received" a notice of deficiency as that term is used in [26 U.S.C. § 6330\(c\)\(2\)\(B\)](#). Because he received [*2] the notice of deficiency and did not file a timely challenge to that notice, appellant was barred from challenging his underlying tax liability. See 26 U.S.C. § 6330(c)(2)(B).

Nor was the Tax Court's denial of appellant's motion for reconsideration an abuse of discretion. See Ark Initiative v. Tidwell, 749 F.3d 1071, 1075, 409 U.S. App. D.C. 346 (D.C. Cir. 2014) ("This court's review of the denial of reconsideration is typically limited to abuse of discretion . . ."). Appellant has not demonstrated that his medical records could not have been obtained prior to trial, and his failure to exercise reasonable diligence in attempting to obtain them does not render them "newly discovered evidence." See Bain v. MJJ Prods., 751 F.3d 642, 647-48, 409 U.S. App. D.C. 468 (D.C. Cir. 2014) (noting that evidence that could have been discovered prior to trial with "reasonable diligence" is not "newly discovered").

Pursuant to [D.C. Circuit Rule 36](#), this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam