

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION
 :
 v. :
 :
 REGINALD SNYDER, ROSALIND :
 SNYDER, DAVID P. SNYDER, and :
 DANIEL B. SNYDER : NO. 96-7560

MEMORANDUM ORDER

Presently before the court is plaintiff's Motion for Summary Judgment in this tax case. The government filed a complaint seeking a judgment for income taxes assessed against defendants Reginald and Rosalind Snyder for the years 1984, 1986 and 1987, and for an order directing the foreclosure and sale of two residential properties in Warrington, Pennsylvania to satisfy the taxpayers' obligation. Defendants David and Daniel Snyder are sons of the taxpayers who were joined as parties because they are joint tenants of the residential properties pursuant to a conveyance from the taxpayers in return for the sum of \$1.00 each.

The government has recently acknowledged that it cannot produce proof of a notice of assessment for 1984. The government moved of record at court proceedings on July 27, 1998 to dismiss with prejudice its claim for taxes for 1984. This reduces from \$59,631.73 to \$3,957.58 the amount of the judgment sought.

It is uncontroverted on the summary judgment record that the defendant taxpayers received notices of assessment for 1986 and 1987 and thereafter neither made payment nor challenged

the assessment in Tax Court as required. See Freck v. I.R.S., 37 F.3d 986, 993 n.13 (3d Cir. 1994). Defendants have presented no competent evidence of record to overcome the presumption of validity of the assessments for 1986 and 1987. See Id. at 992 n.8; U.S. v. Klimek, 952 F. Supp. 1100, 1110-11 (E.D. Pa. 1997). It is uncontested that the collection period for the assessments in question had not expired as of November 5, 1990. Thus, the 1990 amendment to 26 U.S.C. § 6502(a) is applicable and the limitations period for the assessments in question is ten years. See Rocanova v. U.S., 953 F. Supp. 27, 29 (S.D.N.Y. 1996); U.S. v. Jones, 916 F. Supp. 383, 386-87 (D.N.J. 1995); Hillyer v. Com'r. of Internal Revenue, 817 F. Supp. 532, 536 (M.D. Pa. 1993).

Given the amount left at issue, it clearly would be inappropriate to foreclose on both residential properties, each of which is acknowledged to be worth more than \$4,000. Indeed, only as a last resort would it appear to be appropriate to foreclose on either property to satisfy a tax obligation in this relatively modest amount. See U.S. v. Rodgers, 461 U.S. 677, 709 n.39 (1983) (forced sale of property under § 7403 may be deferred "to do justice" in particular case).

At the close of court proceedings on July 27, 1998, the defendant taxpayers prudently agreed to pay the remaining amount at issue with interest from February 28, 1998 and in return the government has agreed with defendants' consent to a dismissal without prejudice of Counts II and III seeking foreclosure of the

respective properties. In view of this disposition, the court need not address or resolve any issue regarding the viability of the conveyance by the taxpayers to their sons or the effect of any liens on the properties as to them as any interest they do have would not be adversely affected and indeed would be protected by the agreed upon disposition.

ACCORDINGLY, this day of July, 1998, upon consideration of Plaintiff's Motion for Summary Judgment and the response thereto and following court proceedings of July 27, 1997 thereon, consistent with the foregoing, **IT IS HEREBY ORDERED** that plaintiff's claim for taxes owed by the defendants Reginald and Rosalind Snyder for 1984 is **DISMISSED** with prejudice; plaintiff's Motion for Summary Judgment on its claim for taxes owed for 1986 and 1987 is **GRANTED** and **JUDGMENT is ENTERED** in the above action for plaintiff and against defendants Reginald and Rosalind Snyder in the amount of \$3,957.58 plus interest from February 28, 1998; plaintiff's claims for foreclosure in Counts II and III are **DISMISSED** without prejudice; and, all claims herein having now been resolved, the above case is **CLOSED**.

BY THE COURT:

JAY C. WALDMAN, J.