

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 14 2000

PATRICK FISHER
Clerk

DRAKE OIL TECHNOLOGY
PARTNERS; FRANK E. ACIERNO,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9025
(T. C. No. 21530-87)
(Appeal from U.S. Tax Court)

DRAKE OIL TECHNOLOGY
PARTNERS; FRANK E. ACIERNO,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9026
(T.C. No. 16768-88)
(Appeal from U.S. Tax Court)

VANGUARD OIL TECHNOLOGY
PARTNERS; DRAKE OIL
TECHNOLOGY PARTNERS;
DILLON OIL TECHNOLOGY
PARTNERS; DERRINGER OIL
TECHNOLOGY PARTNERS 1981;
DERRINGER OIL TECHNOLOGY
PARTNERS 1982;

No. 98-9028
(T.C. Nos. 21530-87 & 16768-88)
(Appeal from U.S. Tax Court)

CROWN OIL TECHNOLOGY
PARTNERS; CARLTON OIL
TECHNOLOGY PARTNERS, LTD.;
CHARLES R. MANGUM; MARILYN
M. MANGUM; JAMES FORD
HARVEY; MARTHA B. HARVEY;
STEVE STROUBE; ELAINE
STROUBE,

Petitioners - Appellants.

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

ROBERT F. JACOBSEN; MARILYN
B. JACOBSEN; BRUCE A.
FORSBERG; LINDA FORSBERG;
TROY A. ATHON; DILLON OIL
TECHNOLOGY PARTNERS,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9029
(T.C. No. 21530-87)
(Appeal from U.S. Tax Court)

ROBERT F. JACOBSEN; MARILYN
B. JACOBSEN; BRUCE A.
FORSBERG; LINDA FORSBERG;
TROY A. ATHON; DILLON OIL
TECHNOLOGY PARTNERS,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9030
(T.C. No. 16768-88)
(Appeal from U.S. Tax Court)

TONY W. DIAL and CANDACE P.
DIAL,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9031
(T.C. No. 31310-86)
(Appeal from U.S. Tax Court)

SCOTT K. MONROE; BARBARA F.
MONROE,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9032
(T.C. No. 4646-89)
(Appeal from U.S. Tax Court)

VULCAN OIL TECHNOLOGY PARTNERS; VANGUARD OIL TECHNOLOGY PARTNERS; DRAKE OIL TECHNOLOGY PARTNERS; DILLON OIL TECHNOLOGY PARTNERS; DERRINGER OIL TECHNOLOGY PARTNERS 1981; DERRINGER OIL TECHNOLOGY PARTNERS 1982; CROWNE OIL TECHNOLOGY PARTNERS; CARLTON OIL TECHNOLOGY PARTNERS, LTD; AMERICAN ENERGY RESOURCES, INC.; SCOTT K. MONROE; BARBARA F. MONROE; RAYMOND P. MEYER; GRETCHEN A. MEYER; WILLIAM D. GINN; ARLENE D. GINN,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee.

No. 98-9033
(T.C. No. 16768-88)
(Appeal from U.S. Tax Court)

VANGUARD OIL TECHNOLOGY PARTNERS; DILLON OIL TECHNOLOGY PARTNERS; CARLTON OIL TECHNOLOGY PARTNERS, LTD; SCOTT K. MONROE; BARBARA F. MONROE; RAYMOND P. MEYER; GRETCHEN A. MEYER; WILLIAM D. GINN; ARLENE D. GINN,

Petitioners - Appellants,
v.
COMMISSIONER OF INTERNAL
REVENUE,
Respondent - Appellee.

No. 98-9034
(T.C. No. 21530-87)
(Appeal from U.S. Tax Court)

JOHN C. MEGNA; BEVERLY J.
MEGNA,
Petitioners - Appellants,
v.
COMMISSIONER OF INTERNAL
REVENUE,
Respondent - Appellee.

No. 98-9036
(T.C. No. 26785-86)
(Appeal from U.S. Tax Court)

CARL BOSSOLA; ROSEMARIE
BOSSOLA,
Petitioners - Appellants,
v.
COMMISSIONER OF INTERNAL
REVENUE,
Respondent - Appellee.

No. 98-9038
(T.C. No. 20263-83)
(Appeal from U.S. Tax Court)

CARL BOSSOLA; ROSEMARIE
BOSSOLA,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9039
(T.C. No. 36390-87)
(Appeal from U.S. Tax Court)

MICHAEL L. MINTZ; LAURIE M.
MINTZ,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9040
(T. C. No. 2709-86)
(Appeal from U.S. Tax Court)

CARL S. BOSSOLA; ROSEMARIE
BOSSOLA,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9041
(T.C. No. 37411-85)
(Appeal from U.S. Tax Court)

JACK SCHOELLERMAN;
KATHERINE SCHOELLERMAN,
DILLION OIL TECHNOLOGY
PARTNERS; LARRY V. GRIDLEY;
DAILA S. GRIDLEY; THOMAS L.
SALIBA; BETTY R. SALIBA;
SAMUEL W. PETERSON; B. L.
PETERSON; GARY G. MORIKONE;
DOROTHY MORIKONE; CROWNE
OIL TECHNOLOGY PARTNERS;
DONALD H. FRITTS; DRAKE OIL
TECHNOLOGY PARTNERS,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9042
(T.C. No. 16768-88)
(Appeal from U.S. Tax Court)

ESTATE OF JAMES T. CAMPION,
DECEASED, LEONA CAMPION,
EXECUTRIX; LEONA CAMPION;
GEORGE M. COLLINS, GRACE E.
COLLINS; JAMES LOTTA; LYNNE
M. LOTTA; ALDEN B. CHASE;
EARLENE CHASE; THOMAS L.
SALIBA; BETTY R. SALIBA;
DWIGHT V. CALL; CHRISTINE G.
CALL; MICHAEL RAFFERTY;
MARY LEE RAFFERTY;
THEODORE L. SHEBS; ROSEMARY
L. SHEBS,

Petitioners - Appellants,

No. 98-9043
(T.C. Nos. 12235-86, 32931-86, 4142-
87, 12476-87, 18986-87, 24227-87,
24013-88, 7300-89, 8272-89,
& 18502-89)
(Appeal from U.S. Tax Court)

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

SAMUEL W. PETERSON; B.L.
PETERSON; DILLON OIL
TECHNOLOGY PARTNERS; GARY
G. MORIKONE; DOROTHY
MORIKONE; CROWNE OIL
TECHNOLOGY PARTNERS;
VICTOR HAY-ROE; LYNN HAY-
ROE; DRAKE OIL TECHNOLOGY
PARTNERS; DONALD H. FRITTS,
LARRY B. GRIDLEY; DAILA S.
GRIDLEY; RICHARD W.
HARTMANN; REMEDIOS C.
HATMANN; THOMAS L. SALIBA;
BETTY R. SALIBA; ROY E.
HANSON; RENEE B. HANSON;
VANGUARD OIL TECHNOLOGY
PARTNERS,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9044
(T.C. Nos. 16768-88 & 21530-87)
(Appeal from U.S. Tax Court)

GARY G. MORIKONE; DOROTHY
MORIKONE,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9045
(T.C. No. 24725-89)
(Appeal from U.S. Tax Court)

ALLEN V. BERGH; KAREN E.
BERGH; PAUL E. JOHNSON; LOIS
C. JOHNSON; STEVE LOO;
GLORIA LOO; JOHN C. RIENSTRA;
MARCHIENE RIENSTRA; EDWARD
J. SAPKO; VIRGINIA SAPKO,

Petitioners,

and

VERA HUDSON; RAYMOND F.
MEYER; GRETCHEN MEYER,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9046
(T.C. No. 5830-88)
(Appeal from U.S. Tax Court)

JODH ARORA; VENNA ARORA;
DILLON OIL TECHNOLOGY
PARTNERS,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9000
(T.C. No. 21530-87)
(Appeal from U.S. Tax Court)

JODH ARORA; VENNA ARORA;
DILLON OIL TECHNOLOGY
PARTNERS,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9001
(T.C. No. 16768-86)
(Appeal from U.S. Tax Court)

GERALD N. NICKS; FLOY
WINONA NICKS; N. H. SHANNON,

Petitioners - Appellants,

and

JAMES H. CLEMENT; IDA L.
CLEMENT; W. RICHARD
MORGAN; JANICE J. MORGAN;

No. 99-9003
(T.C. No. 23863-87)
(Appeal from U.S. Tax Court)

WILLIAM P. SANDLER; JOANNE P.
SANDLER,

Petitioners,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

WILLIAM T. MINTER; SUSAN T.
MINTER,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9004
(T.C. No. 40805-86)
(Appeal from U.S. Tax Court)

RICHARD D. PAOLILLO;
DOROTHY L. PAOLILLO,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9005
(T.C. No. 3037-87)
(Appeal from U.S. Tax Court)

RICHARD D. PAOLILLO;
DOROTHY L. PAOLILLO,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9006
(T. C. No. 3852-88)
(Appeal from U.S. Tax Court)

CLAY WOOD; MARCIA WOOD,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9007
(T.C. No. 32684-88)
(Appeal from U.S. Tax Court)

CLAY WOOD; MARCIA WOOD,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9008
(T.C. No. 41934-86)
(Appeal from U.S. Tax Court)

GEORGE L. THOMPSON; OMA YMA
THOMPSON,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9009
(T.C. No. 22214-86)
(Appeal from U.S. Tax Court)

CLEMENS R. FROMLATH; HELENE
FROMLATH,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9010
(T.C. No. 14545-88)
(Appeal from U.S. Tax Court)

CLEMENS R. FROMLATH; HELENE
FROMLATH,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9011
(T.C. No. 39965-86)
(Appeal from U.S. Tax Court)

RICHARD D. PAOLILLO;
DOROTHY L. PAOLILLO,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9013
(T.C. No. 28327-87)
(Appeal from U.S. Tax Court)

EILEEN ZIMMERMAN; WILLIAM
R. ZIMMERMAN,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9014
(T.C. No. 5757-89)
(Appeal from U.S. Tax Court)

GARY G. MORIKONE; DOROTHY
MORIKONE,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9023
(T.C. No. 32418-86)
(Appeal from U.S. Tax Court)

GARY G. MORIKONE; DOROTHY
MORIKONE,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 98-9024
(T.C. No. 14326-88)
(Appeal from U.S. Tax Court)

GARY G. MORIKONE; DOROTHY
MORIKONE,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 99-9025
(T.C. No. 19427-89)
(Appeal from U.S. Tax Court)

ORDER AND JUDGMENT*

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before **BRORBY**, and **LUCERO**, Circuit Judges and **WEST**, Senior District Judge**.

After examining the materials on file, this panel has determined unanimously that oral argument is not necessary. *See* Fed. R. App. P. 34(a)(2)(B); 10th Cir. R. 34.1(G). The cases are therefore ordered submitted on the current record.

In these appeals, petitioners challenge two orders of the tax court issued on March 5, 1998. *See Estate of Campion v. Comm'r*, 110 T.C. 165 (1998); *Vulcan Oil Tech. Partners v. Comm'r*, 110 T.C. 153 (1998). In those orders, the court held the Commissioner did not breach any statutory or regulatory duties when it failed to offer these appellants more favorable treatment following a failed tax-shelter scheme. Specifically, the court held the Internal Revenue Service did not breach its duty of disclosure under the Tax Equity and Responsibility Act of 1982 and that it did not commit fraud in failing to offer more favorable settlements to these petitioners than to other taxpaying entities. These appeals followed.

Because of the numbers of individuals and partnerships involved in this scheme, multiple entities filed notices of appeal from the tax court's orders. In total, this court received, either through transfer or originally, 45 appeals seeking

** The Honorable Lee R. West, Senior Judge, U.S. District Court for the Western District of Oklahoma, sitting by designation.

review of the 1998 orders. In late 1998, this court ordered briefing in 8 lead cases, which were then heard at oral argument in September, 1999. The remainder were abated.¹ On November 2, 1999, this court issued an Order & Judgment affirming the tax court in all respects. *See Tucek v. Comm'r*, Nos. 98-9016, 98-9017, 98-9018, 98-9019, 98-9020, 98-9022, 98-9023, and 98-9024, (10th Cir. Nov. 2, 1999).

On January 3, 2000, this court directed petitioners in these appeals to show cause why the remaining cases were not controlled by the panel decision in *Tucek*. In a response filed on January 24, appellants admitted that “the substance of the issues is identical in all of the cases in this group.” *See Petitioners’ Response*, dated January 24, 2000, at 2. In a pleading filed on February 17, 2000, the government opined that the issues raised in all of the appeals are identical and that summary affirmance is appropriate.

Upon careful review of the responses, as well as these files, we agree that the issues presented in these matters are identical to those raised and addressed in this panel’s Order & Judgment in *Tucek*. Consequently, we

¹ Two notices of appeals were filed after this court issued its disposition in the lead cases. Those two appeals, numbers 99-9029 and 99-9039, both styled *Dodson v. Comm'r*, were not abated.

AFFIRM the judgments of the tax court for substantially the same reasons as are set forth in that panel decision. The mandates shall issue forthwith.

Entered for the Court

Per Curiam