U.S. v. WILLIAMS, Cite as 106 AFTR 2d 2010-5158, Code Sec(s) 6011; 7403, (DC VA), 03/19/2010

UNITED STATES OF AMERICA, PLAINTIFF v. J. Bryan WILLIAMS, DEFENDANTS.
Case Information:

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Code Sec(s):	6011; 7403
Court Name:	U.S. District Court, Eastern Dist. of Virginia,
Docket No.:	Civil Action No.: 1:09-cv-437,
Date Decided:	03/19/2010.
Tax Year(s):	Year 2000.
Disposition:	Decision against Govt.
Cites:	.

HEADNOTE

1. Report of foreign bank and financial accounts—failure to file—penalties—collection—summary judgment. Govt. was denied summary judgment on its complaint to enforce Report of Foreign Bank and Financial Accounts (FBAR) penalties assessed pursuant to 31 USC 5314 and 31 USC 5321 against taxpayer for his failure to timely report his interest in Swiss bank accounts on Form TDF 90-22 for tax year 2000: genuine issue of material fact existed as to whether taxpayer's failure to file timely form was willful. Although taxpayer had pled guilty to conspiracy to defraud U.S. and tax evasion in connection with funds held in subject accounts, he argued that there was disconnect between basis for that and question of his willfulness as to form filing failure, which in turn he argued couldn't have been willful because he didn't know about form and believed that IRS had notice of accounts at time form was due since accounts had already been frozen. He also contested whether he had sufficient authority over accounts to trigger filing requirement.

Reference(s): ¶ 60,115.01(5) Code Sec. 6011;Code Sec. 7403

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Alexandria Division,

ORDER

Judge: Liam O'Grady United States District Judge

This matter comes before the Court on Plaintiff's Motion for Summary Judgment (Dkt. no. 11). A hearing on the matter was held on March 12, 2010 before the Court. Upon consideration of the

motion, Defendant's response thereto, and for the reasons that follow, it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment (Dkt. no. 11) is DENIED. The parties continue to dispute genuine issues of material fact and this case must proceed to trial.

I. Background

In this case, the government seeks to enforce two "Report of Foreign Bank and Financial Accounts" ("FBAR") penalties it assessed against Defendant J. Bryan Williams ("Williams") for failing to report his interest in two Swiss bank accounts for the year 2000 as required by 31 U.S.C. § 5314 and the Department of Treasury's corresponding promulgations under 31 C.F.R. §103.24–27. The following factual background is undisputed.

In 1993 Williams opened two bank accounts at Credit Agricole Indosuez, SA, in the name of ALQI Holdings, Ltd., a British Corporation ("ALQI"). From that point in 1993 to the year 2000, an amount in excess of $7,000,000 was deposited in the two accounts. In August 2000, the Swiss government requested to interview Williams with respect to the ALQI accounts and Williams thereafter retained Swiss and U.S. attorneys. On November 13, 2000, Williams discussed the ALQI accounts with Swiss authorities working with the U.S. Government. In June 2001, Williams retained tax attorneys to advise him with respect to the two ALQI accounts. The deadline for filing the FBAR form for the tax year 2000 was June 30, 2001. In January 2002, Williams' attorneys met with IRS attorneys to discuss a possible resolution to unfreeze the two accounts and pay taxes on the income derived from those accounts, and in January 2003, Williams applied to participate in an IRS amnesty program for individuals with undeclared overseas accounts. Then, in February 2003, Williams filed amended returns for 1999 and 2000 which disclosed information about the ALQI accounts.

The government subsequently informed Williams in April 2003 that he would not be ac-[pg. 2010-5159] cepted into the amnesty program.[1] Thereafter, in May 2003, Williams agreed to plead guilty to tax fraud and on June 12, 2003, Williams pleaded guilty to one count of conspiracy to defraud the United States and to one count of criminal tax evasion in connection with funds held in the Swiss bank accounts during the years 1993 through 2000. See Gov. Ex. 2 (criminal plea hearing transcript in the case United States v. J. Bryan Williams , 03-cr-406 [92 AFTR 2d 2003-6785] (S.D.N.Y. 2003)). On January 18, 2007, Williams filed a Form TDF 90-22.1 for all years going back to 1993.

II. Legal Standard

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In evaluating a motion for summary judgment, the Court "view[s] the facts and the reasonable inferences drawn therefrom in the light most favorable to the nonmoving party," See EEOC v. Navy Fed. Credit Union, 424 F.3d 397, 405 (4th Cir. 2005); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). "The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary

judgment." Anderson , 477 U.S. at 247–48 (emphasis in original).

III. Jurisdiction

Title 28, § 1345 of the U.S. Code provides subject matter jurisdiction over this case, as this is a suit "commenced by the United States." Further, the government states that it commenced this action at the request and with the authorization of the Chief Counsel for the IRS and at the direction of the Attorney General, pursuant to 26 U.S.C. § 7401, which mandates that "[n]o civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced."

IV. Analysis

a. Statutory Framework

[1] The FBAR penalty at issue in this case arises from 31 U.S.C. § 5314, which requires qualifying individuals to disclose their interests in foreign bank accounts. Section 5314(b) allows the Secretary of Treasury to delegate its authority for enforcement of the section and to prescribe the methods for doing so. In 31 C.F.R. § 103.24–27, the Department of Treasury promulgated the disclosure requirements at issue here, including the requirement to file the Form TDF 09-22.1.[2] As the government notes, an individual is required to file the Form if: (1) the individual was a resident or a person doing business in the United States; (2) the individual had a financial account or accounts that exceeded $10,000 during the calendar year; (3) the financial account was in a foreign country; and (4) the U.S. person had a financial interest in the account or signatory or other authority over the foreign financial account. See 31 C.F.R. § 103.24; 103.27.

Civil penalties for willful violations of § 5314 are provided in 31 U.S.C. § 5321(a)(5)(B),[3] which allows for a maximum assessment of $100,000, two of which were assessed here. Section 5321(b)(1) states that the Secretary of Treasury can assess these penalties and § 5321(b)(2) states that the Secretary of Treasury can commence a civil action to enforce the penalties. In turn, 31 CFR § 103.56(g) delegates the authority to assess these penalties to the IRS.

b. Whether Williams "Willfully" Violated the Statute

The initial and primary issue at this point in the case is a question of intent: whether Williams' failure to submit the Form TDF 90-22.1 by June 30, 2001 was a "willful" act. This is an inherently factual question about which too many material disputes remain to permit the entry of summary judgment in favor of the government.

On this point, the parties' briefs initially focus on the effect the Court should give to Williams' 2003 guilty plea. In the Fourth Circuit, the doctrine of judicial estoppel can prevent a party in a civil action from re-litigating previously-established facts underlying a criminal plea. See Lowery v. Stovall, 92 F.3d 219, 223–224 (4th Cir. 1996). This Circuit also applies [pg. 2010-5160] the doctrine of collateral estoppel when a criminal defendant accepts a guilty plea and later seeks to re-litigate the same issues in a civil proceeding. See United States v. Wight,

839 F.2d 193, 195–197 (4th Cir. 1987). According to this doctrine, "a defendant is precluded from retrying issues necessary to his plea agreement in a later civil suit." Id.; see also United States v. Moore, 765 F.Supp. 1251, 1255 (E.D.Va. 1991); United States v. One 1987 Mercedes Bern 300E, 820 F.Supp. 248, 253 (ED.Va. 1993).

In applying either doctrine, the question is not whether, as a general proposition, Williams can be precluded from disaffirming the facts underlying his 2003 guilty plea. He can. Rather, as became clear at the March 12 hearing, the issue presented in this case is defining which specific facts were necessarily part of Williams' plea.

For instance, in his plea, Williams clearly admitted "[in] the calendar year returns for §93 through 2000, I chose not to report the income to my -- to the Internal Revenue Service in order to evade substantial taxes owed" on the ALQI accounts. Gov. Ex. 2 at 18. However, Williams argues that there is a disconnect between this broad factual basis underlying his plea and the specific question at issue here: whether on June 30, 2001, Williams willfully failed to submit a Form TDF 90-22.1 for tax year 2000.

At that point in 2001, Williams contends that U.S. authorities were already on notice of the accounts, and indeed, the assets in the accounts had already been frozen.[4] Thus, according to Williams, he did not have the requisite intent to "willfully" fail to disclose the accounts by filing the Form TDF 90-22.1 on June 30, 2001 because he believed their existence had already been disclosed. Further, Williams claims he had no knowledge that Form TDF 90-22.1 existed, nor had his attorneys advised him as to its existence or significance before June 30, 2001. Lastly, Williams also contests whether he had "signatory or other authority over" the accounts as required by 31 C.F.R. § 103.24 by June 30, 2001 because the accounts were frozen.

These disputes are surely material in this case. Drawing all reasonable inferences in favor of Williams as the non-moving party, the Court concludes that genuine issues of material fact remain in dispute in this case. Plaintiff's Motion for Summary Judgment must be denied.

Alexandria, Virginia

March 19, 2010

Liam O'Grady

United States District Judge

[1] In his Brief in Opposition, Williams argues that the IRS denied him entry into the amnesty program because the government already knew about the accounts before Williams applied to the program.

[2] As the government advises, Form 1040, Schedule B, Part III instructs a taxpayer to report an interest in a financial account in a foreign country by checking "Yes" or "No" in the appropriate box on the form. Form 1040 then refers the taxpayer to use Form TDF 90-22.1 which provides that it should be used to report a financial interest in or authority over bank accounts, securities

accounts, or other financial accounts in a foreign country.

[3] As that statute existed prior to amendment in 2004. Willful violations are now addressed in 31 U.S.C. § 5321(a)(5)(C), which provides a different calculation of the maximum available penalty.

[4] At the March 12 hearing, it also appeared that a dispute remains as to when these assets were actually frozen and as to when Williams met with certain authorities about the Swiss accounts.