

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,)
 Plaintiff-Appellee,)
)
 v.)
)
JOHN S. WILLIAMSON,) No. 07-2017
 NANCY L. WILLIAMSON,)
 JOHN G. WILLIAMSON,)
 DAVID A. WILLIAMSON,)
 GARRETT J. WILLIAMSON and)
 DEBORAH KRUEHM,)
 Defendants-Appellants.)

APPELLEE’S MOTION FOR SANCTIONS

The United States of America, appellee herein, through counsel, respectfully requests that appellants be sanctioned \$8,000 pursuant to 28 U.S.C. § 1912 and Rule 38 of the Federal Rules of Appellate Procedure for repeatedly taking frivolous appeals. The Government suggests that this motion be decided by the same panel that hears the merits of this appeal.

STATEMENT

This appeal is the latest round in a continuing fight by appellants John S. and Nancy L. Williamson (the Williamsons) to prevent the sale of their property to satisfy their federal income tax liabilities. *See Williamson v. United States*, No. 99-2294, 2000 WL 676053 (10th Cir. May 24, 2000); *Williamson et al. v. Sena et al.*, No. 03-570, 2006 WL 1308268 (D.N.M. Mar. 29, 2006), *appeal pending*, 10th Cir. No. 06-2103. In *Williamson v. United States*, 2000 WL 676053 at * 2, the Court assessed sanctions against the Williamsons in the amount of \$1,500.

As is discussed in detail in the brief that we are filing concurrently with this motion, the Government brought this suit in August 2004 against the Williamsons; their sons, Garrett, David, and John G. Williamson; and John Williamson's sister, Deborah Kruhm, in order to reduce to judgment federal income tax assessments against the Williamsons for various tax years between 1985 and 1998 and to foreclose federal tax liens against real property located at 31 Ben Road and 24 Dinah Road in Edgewood, Bernalillo County, New Mexico (the

Ben Road and Dinah Road properties, respectively). (Doc. 1.)¹ As of May 2004, the unpaid assessments against John S. Williamson totaled approximately \$152,000, and those against Nancy L. Williamson totaled approximately \$36,000. (*Id.* at 5, ¶ 16; 7, ¶ 19.)

The District Court granted the Government's motions for partial summary judgment with respect to the assessments and foreclosure against the Ben Road property. (Docs. 67, 114.) In doing so, the court rejected as "frivolous" the Williamsons' "main argument . . . that the federal income tax statutes do not apply to them and they therefore owe no . . . taxes." (Doc. 67 at 4-5; Doc. 114 at 1-2.) The court noted that the Williamsons "have been informed, several times, in several different cases, that their claim to be exempt from the federal income tax has no legal justification."² (Doc, 67 at 5.)

¹ "Doc." references are to the documents constituting the original record, as numbered by the Clerk of the District Court. "Br." references are to the appellants' informal brief.

² See *Williamson v. United States*, No. 99-2294, 2000 WL 676053 (10th Cir. May 24, 2000); *Williamson v. Commissioner*, 53 T.C.M. (CCH) 287 (1987); *Williamson v. Commissioner*, 43 T.C.M. (CCH) 141 (1981).

Following a two-day bench trial, the District Court entered findings of fact, conclusions of law, and a judgment in favor of the Government with regard to the Dinah Road property. (Doc. 149, 150.) The court stated that the evidence was “clear and convincing” that the Williamsons fraudulently transferred the Dinah Road property to their sons, that the sons held the title as nominees of their parents, and that the federal tax liens legally attached to the property. (Doc. 149 at 11, ¶ 11; 12, ¶ 16.)

During the litigation, the District Court assessed Rule 11 sanctions against the appellants in the amount of \$2,730.60, both for their filing of frivolous pleadings and for their “intentional and willful” failure to appear at a show-cause hearing to defend their actions in making such filings. (Doc. 80 at 2.) The court also ordered the appellants to pay travel costs for the Government’s counsel in connection with a hearing on the appellants’ motion to offset the sanctions by costs of their own, finding that the motion was “made for an improper purpose.” (Doc. 89.)

ARGUMENT

As is discussed in the brief we are filing concurrently with this motion, the District Court properly reduced the income tax assessments against the Williamsons to judgment and allowed foreclosure against their Ben Road and Dinah Road properties. On appeal, appellants make no colorable claim of error in the orders and judgment below, but simply rehash the same long-discredited arguments that they have pressed for years in this Court as well as the District Court. In particular, they claim that the Williamsons are not “taxpayers” as defined in the Internal Revenue Code, because they are “Citizens of New Mexico State” (Br. 5), and that no federal statute or regulation “authoriz[es] any ‘kind of tax 1040’” (Br. 6). This Court specifically rejected these arguments as “frivolous” in *Williamson v. United States*, 2000 WL 676053, at *2. When the appellants advanced similar contentions in support of their request for a stay of execution of the order of sale issued by the District Court in this case, this Court deemed them to be “tax protestor arguments” in its order dated February 5, 2007, denying the stay request.

This latest episode in taxpayers' lengthy record of frivolous litigation calls for an award of sanctions for abuse of the judicial process, as authorized by 28 U.S.C. § 1912 and Fed. R. App. P. 38. *See, e.g., Kyler v. Everson*, 442 F.3d 1251, 1253 (10th Cir. 2006); *Braley v. Campbell*, 832 F.2d 1504, 1510 (10th Cir. 1987); *Casper v. Commissioner*, 805 F.2d 902, 907 (10th Cir. 1986). In tax cases involving frivolous appeals, this Court typically imposes a lump sum amount as a sanction under Fed. R. App. P. 38, in lieu of requesting the Government to undertake a specific computation of costs in attorneys' fees on a case-by-case basis. *See Casper*, 805 F.2d at 907. "[I]mposing a lump sum sanction saves the government the additional cost of calculating its expenses, and also saves the court the time and expense of reviewing the submission of costs." *Parker v. Commissioner*, 117 F.3d 785, 787 (5th Cir. 1997). *Accord, Wilcox v. Commissioner*, 848 F.2d 1007, 1009 (9th Cir. 1988); *Schoffner v. Commissioner*, 812 F.2d 292, 294 (6th Cir. 1987) (requiring the Government to provide a detailed accounting of its costs "would largely defeat the intent of the rule, which is to reduce, rather than increase, the flow of essentially unproductive paperwork").

According to the records of the Tax Division of the Department of Justice, the *average* expense in attorney salaries and other costs incurred by this office in the defense of frivolous taxpayer appeals in which sanctions were awarded during 2004 and 2005 was more than \$11,000.³ In this case, the Government is requesting \$8,000 in sanctions, the amount granted in *Kyler*, 442 F.3d at 1254; even though the Williamsons are “recidivists” who have been undeterred by previous sanctions and a pending threat of sanctions for making the same arguments the appellants press in this appeal.⁴ *See Szopa v. United States*, 460 F.3d 884, 887 (7th Cir. 2006) (doubling “presumptive” sanction amount because taxpayer was a “recidivist” who had filed previous frivolous cases). As noted above, in *Williamson v. United States*, 215 F.3d 1338, this Court has already sanctioned the

³ In making this computation, we have eliminated from consideration instances in which significantly greater amounts of attorney time were devoted to the case than are typically reported for such cases.

⁴ We recognize that the previous appeals have been brought only by the Williamsons. The other appellants, however, not only are the Williamsons’ close family members, but were themselves subject to the two sanctions orders in the District Court in this case (Docs. 80, 89). All of the appellants were thus on notice that their arguments are frivolous.

Williamsons in the amount of \$1,500. 2000 WL 676053 at * 2. In the pending appeal in *Williamson et al. v. Sena et al*, 10th Cir. No. 06-2103, the Government has also requested \$8,000 in sanctions against the Williamsons. Indeed, because the appellants apparently are undeterred by actual as well as threatened monetary sanctions, the Court also may wish to consider prohibiting them from filing any appeals or other pleadings in this Court without first obtaining leave to do so.

CONCLUSION

This Court should impose sanctions against appellants for repeatedly raising frivolous arguments and taking this frivolous appeal. Sanctions of \$8,000 would be appropriate.

Respectfully submitted,

EILEEN J. O'CONNOR
Assistant Attorney General

/s/ GRETCHEN M. WOLFINGER

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APRIL 2007

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DECLARATION

Gretchen M. Wolfinger, of the Department of Justice, Tax
Division, Appellate Section, Washington, D.C., states as follows:

The facts set forth in the foregoing motion are true and correct to
the best of my knowledge and belief.

I declare under penalty of perjury, pursuant to 28 U.S.C.
§ 1746, that the foregoing is true and correct. Executed this 23rd day of
April, 2007, in Washington, D.C.

/s/ GRETCHEN M. WOLFINGER

GRETCHEN M. WOLFINGER
Attorney

CERTIFICATE OF SERVICE

It is hereby certified that an original and three copies of the foregoing motion for sanctions and accompanying declaration were sent to the Clerk on this 23rd day of April, 2007, via FedEx, and that service of the motion and accompanying declaration has been made on appellants, appearing *pro se*, on this 23rd day of April, 2007, by sending a copy on CD and a paper copy of each document via FedEx, in an envelope properly addressed to:

John S. Williamson
Nancy L. Williamson
John G. Williamson
David A. Williamson
Garrett J. Williamson
Deborah Kruhm
1277 Historic Rte 66E
Tijeras, New Mexico 87059

It is further certified that this motion has been submitted in digital PDF format by e-mail to esubmission@ca10.uscourts.gov; that no privacy redactions were required; that the electronic submission is an exact copy of the written document filed with the Clerk; and that the digital submission has been scanned for viruses with the eTrust

Antivirus program (copyright 2003) and, according to the program, the document is free of viruses.

/s/ GRETCHEN M. WOLFINGER

GRETCHEN M. WOLFINGER
Attorney