

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

BALLARD ET UX. *v.* COMMISSIONER OF INTERNAL
REVENUECERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

No. 03–184. Argued December 7, 2004—Decided March 7, 2005*

The Tax Court’s Chief Judge appoints auxiliary officers, called special trial judges, to hear certain cases, 26 U. S. C. §7443A(a), (b), but ultimate decision, when tax deficiencies exceed \$50,000, is reserved for the court itself, §7443A(b)(5), (c). Tax Court Rule 183(b) governs the two-tiered proceedings in which a special trial judge hears the case, but the court renders the final decision. Rule 183(b) directs that, after trial and submission of briefs, the special trial judge “shall submit a report, including findings of fact and opinion, to the Chief Judge, [who] will assign the case to a Judge . . . of the Court.” In acting on the report, the assigned Tax Court judge must give “[d]ue regard . . . to the circumstance that the [s]pecial [t]rial [j]udge had the opportunity to evaluate the credibility of the witnesses,” must “presum[e] to be correct” factfindings contained in the report, and “may adopt the [s]pecial [t]rial [j]udge’s report or may modify it or may reject it in whole or in part.” Rule 183(c). Until 1983, such special trial judge reports were made public and included in the record on appeal. Pursuant to a rule revision that year, those reports are now withheld from the public and excluded from the appellate record, and Tax Court judges do not disclose whether the final decision “modi[fies]” or “reject[s]” the special trial judge’s initial report. Instead, the final decision invariably begins with a stock statement that the Tax Court judge “agrees with and adopts the opinion of the [s]pecial [t]rial [j]udge.” Whether and how the final decision deviates from the spe-

*Together with No. 03–1034, *Estate of Kanter, Deceased, et al. v. Commissioner of Internal Revenue*, on certiorari to the United States Court of Appeals for the Seventh Circuit.

Syllabus

cial trial judge's original report is never revealed.

Petitioners Claude Ballard, Burton Kanter, and another taxpayer received notices of deficiency from respondent Commissioner of Internal Revenue (Commissioner) charging them with failure to report certain payments on their individual tax returns and with tax fraud. They filed petitions for redetermination in the Tax Court, where the Chief Judge assigned the consolidated case to Special Trial Judge Couvillion. After trial, Judge Couvillion submitted a Rule 183(b) report to the Chief Judge, who issued an order assigning the case to Tax Court Judge Dawson "for review [of that report], and if approved, for adoption." Ultimately, Judge Dawson issued the Tax Court's decision, finding that the taxpayers had acted with intent to deceive the Commissioner, and holding them liable for underpaid taxes and substantial fraud penalties. That decision, consisting wholly of a document labeled "Opinion of the Special Trial Judge," declared: "The Court agrees with and adopts the opinion of the Special Trial Judge, which is set forth below."

Based on conversations between Kanter's attorney and two Tax Court judges, the taxpayers came to believe that the decision was *not* in fact a reproduction of Judge Couvillion's Rule 183(b) report. According to a declaration submitted by Kanter's attorney, Judge Couvillion had concluded that the taxpayers did not owe taxes with respect to some of the payments at issue and that the fraud penalty was not applicable. The taxpayers therefore filed motions seeking access to Judge Couvillion's initial report as submitted to the Chief Judge or, in the alternative, permission to place that report under seal in the appellate record. Denying the requested relief, the Tax Court stated: "Judge Dawson . . . and Special Trial Judge Couvillion agre[e] that . . . Judge Dawson adopted the findings of fact and opinion of . . . Judge Couvillion, . . . presumed [those] findings of fact . . . were correct, and . . . gave due regard" to Judge Couvillion's credibility findings. The order added that "any preliminary drafts" of the special trial judge's report were "not subject to production because they relate to [the court's] internal deliberative processes." On appeal, both the Eleventh Circuit in Ballard's case and the Seventh Circuit in Kanter's case rejected the taxpayers' objection to the absence of the special trial judge's Rule 183(b) report from the appellate record. Proceeding to the merits, both Courts of Appeals affirmed the Tax Court's final decision in principal part.

Held: The Tax Court may not exclude from the record on appeal Rule 183(b) reports submitted by special trial judges. No statute authorizes, and Rule 183's current text does not warrant, the concealment at issue. Pp. 10–23.

(a) Rule 183(c)'s promulgation history confirms the clear under-

Syllabus

standing, from the start, that deference is due the trial judge's factfindings under the "[d]ue regard" and "presumed to be correct" formulations. Under Rule 183's precursor, the Tax Court's review of the special trial judge's report was a transparent process. The report was served on the parties, who were authorized to file objections to it, and the regular Tax Court judge reviewed the report independently, on the basis of the record and the parties' objections. Parties were therefore equipped to argue to an appellate court that the Tax Court failed to give the special trial judge's findings the required measure of respect. On adoption of the 1983 amendments, however, the Tax Court stopped acknowledging instances in which it rejected or modified special trial judge findings. Instead, it appears that the Tax Court inaugurated a novel practice whereby the special trial judge's report is treated essentially as an in-house draft to be worked over collaboratively by the regular Tax Court judge and the special trial judge. The regular Tax Court judge then issues a decision purporting to "agre[e] with and adop[t] the opinion of the Special Trial Judge."

Nowhere in the Tax Court's current Rules is this joint enterprise described or authorized. Notably, the Rules provide for only one special trial judge "opinion": Rule 183(b) instructs that the special trial judge's report, submitted to the Chief Judge *before* a regular Tax Court judge is assigned to the case, shall consist of findings of fact and opinion. It is the Rule 183(b) report, not some subsequently composed collaborative report, that Rule 183(c), tellingly captioned "Action on the Report," instructs the Tax Court judge to review and adopt, modify, or reject. It is difficult to comprehend how a Tax Court judge would give "[d]ue regard" to, and "presum[e] to be correct," an opinion he himself collaborated in producing.

The Tax Court, like all other decisionmaking tribunals, is obliged to follow its own Rules. See, e.g., *Service v. Dulles*, 354 U. S. 363, 388. Although the Tax Court is not without leeway in interpreting its Rules, it is unreasonable to read into Rule 183 an unprovided-for collaborative process, and to interpret the formulations "due regard" and "presumed to be correct," to convey something other than what those same words meant prior to the 1983 rule changes. Pp. 10–17.

(b) The Tax Court's practice of not disclosing the special trial judge's original report, and of obscuring the Tax Court judge's mode of reviewing that report, impedes fully informed appellate review of the Tax Court's decision. In directing the regular judge to give "due regard" to the special trial judge's credibility determinations and to "presum[e] . . . correct" the special trial judge's factfindings, Rule 183(c) recognizes a well-founded, commonly accepted understanding: The officer who hears witnesses and sifts through evidence in the first instance will have a comprehensive view of the case that cannot

Syllabus

be conveyed full strength by a paper record. Fraud cases, in particular, may involve critical credibility assessments, rendering the appraisals of the judge who presided at trial vital to the ultimate determination. In the present cases, for example, the Tax Court's decision repeatedly draws outcome-influencing conclusions regarding the credibility of Ballard, Kanter, and other witnesses. Absent access to the special trial judge's Rule 183(b) report in this and similar cases, the appellate court will be at a loss to determine (1) whether the credibility and other findings made in that report were accorded "[d]ue regard" and were "presumed . . . correct" by the Tax Court judge, or (2) whether they were displaced without adherence to those standards.

The Tax Court's practice is extraordinary, for it is routine in federal judicial and administrative decisionmaking both to disclose a hearing officer's initial report, see, *e.g.*, 28 U. S. C. §636(b)(1)(C), and to make that report part of the record available to an appellate forum, see, *e.g.*, 5 U. S. C. §557(c). The Commissioner asserts a statutory analogy, however, 26 U. S. C. §7460(b), which instructs that when the full Tax Court reviews the decision of a single Tax Court judge, the initial one-judge decision "shall not be part of the record." This Court rejects the Commissioner's endeavor to equate proceedings that differ markedly. Full Tax Court review is designed for resolution of legal issues. Review of that order is *de novo*. In contrast, findings of fact are key to special trial judge reports. Those findings, under the Tax Court's Rules, are not subject to *de novo* review. Instead, they are measured against "due regard" and "presumed correct" standards. Furthermore, all regular Tax Court members are equal in rank, each has an equal voice in the Tax Court's business, and the regular judge who issued the original decision is free to file a dissenting opinion recapitulating that judge's initial opinion. The special trial judge, who serves at the pleasure of the Tax Court, lacks the regular judges' independence and the prerogative to publish dissenting views.

Given this Court's holding that the Tax Court's practice is not described and authorized by that court's Rules, this Court need not reach, and expresses no opinion on, the taxpayers' further arguments based on due process and other statutory provisions. Should the Tax Court some day amend its Rules to adopt the idiosyncratic procedure here rejected, the changed character of the Tax Court judge's review of special trial judge reports would be subject to appellate review for consistency with the relevant federal statutes and due process. Pp. 17–23.

No. 03–184, 321 F. 3d 1037; No. 03–1034, 337 F. 3d 883, reversed and remanded.

Syllabus

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, O’CONNOR, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. KENNEDY, J., filed a concurring opinion, in which SCALIA, J., joined. REHNQUIST, C. J., filed a dissenting opinion, in which THOMAS, J., joined.