

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SYNANON CHURCH,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 82-2303

FILED

MAR -2 1983

APPEARANCES

Philip C. Bourdette and David R. Benjamin of Bourdette, Benjamin & Weill, Geoffery Gitner of Scherr, Krebs & Gitner and Bruce R. Hopkins for plaintiff.

Thomas M. Lawler of the Department of Justice, Tax Division for defendant.

MEMORANDUM ORDER

Plaintiff, Synanon Church, (hereinafter "Synanon") has brought this action under Section 7428 of the Internal Revenue Code (hereinafter the "Code") for a declaratory judgment that it is a tax exempt organization.¹ In its complaint, Synanon demanded a jury trial on this issue. Defendant, believing that jury trials are not available in cases brought under § 7428, has filed a Motion to Strike Plaintiff's Jury Demand. That motion is now before the Court. Although this issue appears to be a question of first impression, the Court is convinced that Congress did not intend to provide jury trials in suits under § 7428. Therefore, defendant's motion will be granted and this case will be tried to the bench.

1. In a previous ruling on Defendant's Motion for Partial Dismissal, the Court held that plaintiff's action must be limited to seeking a declaratory judgment that it was tax exempt for fiscal years 1977 and 1978.

Under the doctrine of sovereign immunity, the United States "is immune from suit save as it consents to be sued." United States v. Sherwood, 312 U.S. 584, 586 (1941). This doctrine dictates both whether the United States may be sued and how it may be sued. See 5 J. Moore Federal Practice ¶ 38.31[2] (2d ed. 1982). There is no Constitutional right to a jury trial in suits against the United States. Galloway v. United States, 319 U.S. 372, 388-389 (1943). Therefore, in order to determine whether a jury trial is available in such suits, one must look to the statute under which the action is brought -- i.e., the statute that operates as a waiver of sovereign immunity. Id.

In this case, suit is brought under § 7428 of the Code. Jurisdiction to hear cases under Code § 7428 is conferred by 28 U.S.C. § 1346(e) which states that: "The district courts shall have original jurisdiction of any civil action against the United States provided in . . . section 7428 (in the case of the United States district court for the District of Columbia). . . ." The availability of jury trials in cases brought pursuant to § 1346(e) is dictated by 28 U.S.C. § 2402. That section provides:

Jury trial in actions against the United States

Any action against the United States under section 1346 [except section 1346(a)(1)] shall be tried by the court without a jury. . . .
[Emphasis added].

Thus, it follows that actions such as this one, seeking a declaratory judgment under § 7428 are not to be tried to a jury.

Plaintiff argues that § 1346(e) is not the appropriate jurisdictional statute for this action. Rather, plaintiff explains, § 7428 itself confers jurisdiction upon the Court and therefore

§§ 1346 and 2402 are irrelevant. Having thus avoided the proscriptions of § 2402, plaintiff contends that actions under § 7428 must be treated the same as any other action for a declaratory judgment in which issues of fact may be tried to a jury.² See Beacon Theaters, Inc. v. Westover, 359 U.S. 500, 504 (1959).

The Court finds two flaws in plaintiff's argument. First, upon careful examination of the legislative history, the Court is convinced that § 7428 is not a jurisdictional statute. Prior to 1976, no declaratory relief was available in suits regarding federal taxes. See Bob Jones University v. Simon, 416 U.S. 725 (1974). Then, in 1976, Congress amended 28 U.S.C. §§ 1346(e) and 2201 and enacted § 7428 of the Code. Act of Oct. 4, 1976, Pub. L. No. 94-455, Title XIII, §§ 1306(a), (b)(7) and (b)(8), 90 Stat. 1525, 1717-20. The language of these sections makes it clear that the reason for amending § 2201 and enacting § 7428 was to waive the sovereign immunity of the United States and to make declaratory relief available. No mention of jurisdiction is made in either of these statutes.

2. Plaintiff cites 28 U.S.C. § 2201 (otherwise known as the Declaratory Judgment Act) in support of this proposition. This Act creates the remedy of declaratory judgments in certain actions, including those under § 7428. It is important to note, however, that § 2201 is not a jurisdictional statute. Schilling v. Rogers, 363 U.S. 666, 677 (1960).

Plaintiff also argues that the right to a jury trial in this action is conferred by Rule 57 of the Federal Rules of Civil Procedure. This argument is seriously misguided. The Federal Rules of Civil Procedure do exactly what their name implies -- they establish procedural rules. They do not create substantive rights. 1B J. Moore Federal Practice ¶ 0.501[3] (2d ed. 1982).

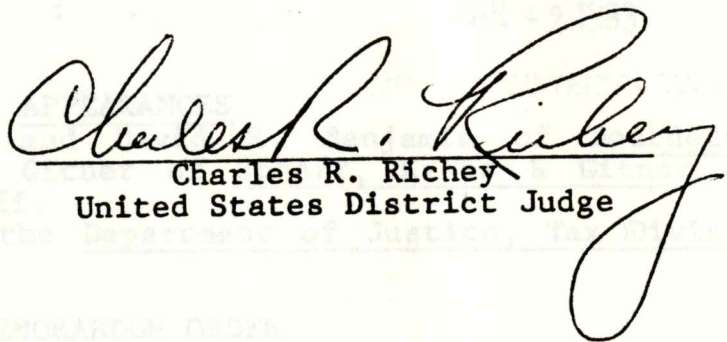
Accordingly, it is, by the Court, this 1 day of February, 1983.

By contrast, § 1346(e) is a statute that was clearly intended to confer jurisdiction. It states that "[t]he district court shall have original jurisdiction" over actions under § 7428. In addition, the public law amending the section states: "Section 1346(e) . . . (relating to jurisdiction of district courts with the United States as defendant) is amended [to include § 7428]." Pub. L. No. 94-455 § 1306(b)(7) [emphasis added]. Moreover, to hold that § 7428 is itself a jurisdictional statute would require the conclusion that the amendment of § 1346(e) was entirely superfluous. This Court is hesitant to conclude that Congress acted for naught.

The second problem the Court finds with plaintiff's argument, is that it incorrectly states the presumptions applicable in this situation. According to plaintiff, it should be entitled to a jury trial because there is no statutory proscription of jury trials under § 7428 and, in the absence of a statutory bar, jury trials are available as a matter of right in most declaratory judgment actions. However, this proposition is not applicable to cases against the government. As previously noted, there is no right to a jury trial in cases against the government. See p.2 supra. Rather, jury trials are only available in cases in which the United States is a defendant if the statute under which the plaintiff proceeds specifically provides such a right. Id. Plaintiff does not even attempt to argue that § 7428 specifically provides a right to trial by jury and the Court concludes that jury trials are in fact prohibited in such actions.

Accordingly, it is, by the Court, this 2 day of February, 1983 hereby,

ORDERED that Defendant's Motion to Strike Plaintiff's Jury Demand is granted and the trial of all issues in this case shall be to the bench.


Charles R. Richey
United States District Judge

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