

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID WHEELER, an individual; ALAN
BIRD, Trustee of City Holding Trust, as
nominee of David Wheeler,

Defendants - Appellants,

and

STATE OF CALIFORNIA FRANCHISE
TAX BOARD,

Defendant.

No. 08-56282

D.C. No. 2:07-cv-06384-VBF-
PLA10/1/7

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Argued and Submitted October 7, 2010
Pasadena, California

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Before: WARDLAW and W. FLETCHER, Circuit Judges, and LYNN,**
District Judge.

David Wheeler appeals the district court's grant of summary judgment reducing IRS tax assessments to judgment and foreclosing tax liens on the house held by CHT Trust as Wheeler's nominee. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The IRS introduced sufficient evidence to trigger the legal presumption of correctness afforded to tax assessments. *See United States v. Fior D'Italia, Inc.*, 536 U.S. 238, 242 (2002). Wheeler never introduced evidence that clearly demonstrated the proper amount of taxes he owes, and failed to overcome this presumption. *See United States v. Pierce*, 609 F.2d 407, 408 (9th Cir. 1979) (per curiam). The district court thus correctly granted summary judgment to the government in reducing the IRS tax assessments to judgment.

Wheeler also challenges the authority of various IRS agents to make the assessments against Wheeler and the authority of other IRS agents to authorize the Department of Justice to file this suit. We have described similar claims as "frivolous." *Palmer v. IRS*, 116 F.3d 1309, 1311, 1314 (9th Cir. 1997). The district court correctly rejected them.

**The Honorable Barbara M. Lynn, United States District Judge for the Northern District of Texas, sitting by designation.

Finally, the district court was correct in concluding that the CHT Trust was Wheeler's nominee. Whether a certain level of control over land or goods as established by state law "constitutes 'property' or 'rights to property' is a matter of federal law." *Drye v. United States*, 528 U.S. 49, 58 (1999) (quoting *United States v. Nat'l Bank of Commerce*, 472 U.S. 713, 727 (1985)). Courts in this circuit have generally agreed on a test for determining if property is held as a nominee. *See, e.g., United States v. Bell*, 27 F. Supp. 2d 1191, 1195 (E.D. Cal. 1998); *Towe Antique Ford Found. v. IRS*, 791 F. Supp. 1450, 1454 (D. Mont. 1992), *aff'd*, 999 F.2d 1387 (9th Cir. 1993). The district court correctly applied this test. The district court thus correctly granted the government's motion for summary judgment foreclosing the tax lien on, and ordering sale of, the house held by CHT Trust as Wheeler's nominee.

AFFIRMED.