



U.S. Department of Justice

Tax Division

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CDC:GSR:RLHutter
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February 5, 2015

Molly C. Dwyer, Esquire
Clerk, United States Court of Appeals
For the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Boardman v. Commissioner of Internal Revenue
(9th Cir. - No. 13-15022)

Dear Ms. Dwyer:

This letter responds to the appellant's letter of January 30, 2015, sent pursuant to Fed. R. App. P. 28(j), and informing the Court of the recent Supreme Court decision in *Holt v. Hobbs*, __ U.S. __, 2015 WL 232143 (January 20, 2015).

In this case, appellant sought an order enjoining the Government from following its normal tax collection procedures and directing the Government to create new procedures tailored to collecting taxes from, and settling disputes with, "taxpayers who refuse to pay taxes because of conscience or religion." The District Court held that the relief appellant sought was barred by the Anti-Injunction Act, 26 U.S.C. § 7421(a), and that the court thus lacked jurisdiction.

Holt involved a claim by a prisoner, pursuant to the Religious Land Use and Institutionalized Persons Act (RLUIPA), that the prison's policy against growing beards impermissibly burdened the exercise of his religion, which required growing a beard. In her letter, appellant stresses "*Holt's* focus on the necessity of factual bases for a judicial decision on RLUIPA/RFRA issues," while noting that "no evidence has been admitted" in her case. The factual analysis required in *Holt* is not relevant here, however, because in *Holt*, the RLUIPA itself provided jurisdiction for the prisoner's claim, and evaluating it necessarily required a factual inquiry under the terms of the

statute. Here, the District Court correctly held that the Anti-Injunction Act barred the appellant's action, and that the court lacked jurisdiction to consider appellant's allegations on their merits. The court correctly based its ruling on the allegations contained in appellant's complaint and did not need to consider evidence in reaching its decision.

Accordingly, the *Holt* decision does not support appellant's position in this case, and, as we discussed in our answering brief, relief from the Anti-Injunction Act is not provided by the Religious Freedom Restoration Act.

Sincerely,

s/ Randolph L. Hutter

RANDOLPH L. HUTTER
Attorney for the Appellee

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2015, I electronically filed the foregoing response pursuant to Fed. R. App. P. 28(j) with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Randolph L. Hutter
Randolph L. Hutter
Attorney for the Appellee