

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

March 13, 2018

Elisabeth A. Shumaker  
Clerk of Court

EDDIE JACOBS; MARCIANNA R.  
JACOBS,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent - Appellee.

No. 17-9008  
(Tax No. 21545-16)  
(U.S. Tax Court)

**ORDER AND JUDGMENT\***

Before **LUCERO, HARTZ, and McHUGH**, Circuit Judges.

Eddie and Marcianna Jacobs appeal a Tax Court order granting summary judgment to the Commissioner of Internal Revenue and finding a deficiency in their 2013 income taxes. Exercising jurisdiction under 26 U.S.C. § 7482(a)(1), we affirm.

**I**

The Jacobs filed a pro se petition<sup>1</sup> in Tax Court disputing a Notice of Deficiency and a Notice of Determination Concerning Collection Action. They

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\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

challenged the disallowance of a deduction for domestic production activities in 2013. Having reported \$25,378.48 in non-taxable oil and gas royalties received from the Office of the Special Trustee for American Indians, the Jacobs sought to deduct their Oklahoma gross production tax. They also made arguments relating to the 2015 tax year.

The Tax Court dismissed the petition for lack of jurisdiction as to the 2015 tax year. As to the alleged 2013 deficiency of \$695, the Tax Court granted summary judgment in favor of the Commissioner, concluding that the Jacobs were not entitled to a deduction for state taxes paid on royalty income that was exempt from federal income tax. This appeal followed.

## II

We review a grant of summary judgment by the Tax Court de novo. Keller Tank Servs. II v. Comm’r, 854 F.3d 1178, 1195 (10th Cir. 2017). Summary judgment is appropriate when “there is no genuine issue as to any material fact and . . . a decision may be rendered as a matter of law.” Scanlon White, Inc. v. Comm’r, 472 F.3d 1173, 1175 (10th Cir. 2006).

The sole issue the Jacobs raise on appeal is whether they were entitled to deduct the Oklahoma gross production taxes they paid. Under the Internal Revenue Code, a deduction is not permitted for “[a]ny amount otherwise allowable as a

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<sup>1</sup> Because the appellants are pro se, “we liberally construe [their] filings, but we will not act as [their] advocate.” James v. Wadas, 724 F.3d 1312, 1315 (10th Cir. 2013).

deduction which is allocable to one or more classes of income other than interest . . . wholly exempt from” federal income tax. 26 U.S.C. § 265(a)(1). The Jacobs do not dispute that the Oklahoma gross production tax at issue was incurred on oil and gas royalties that are exempt from federal income tax. Thus, the state tax is allocable to income that is exempt from federal tax and is therefore not deductible.

The Jacobs argue that, because Indian property royalty income is exempt from taxation, they should not be liable for Oklahoma’s gross production tax. But this argument fails to address whether their state tax payment is deductible from their federal gross income. To the extent the Jacobs wish to challenge their Oklahoma tax liability, this case would not provide the proper context for such a challenge. The Tax Court’s jurisdiction over this case was based on 26 U.S.C. § 6214, which does not grant authority to determine any issues of state taxation. Similarly, our jurisdiction under § 7482 is limited to the final decision by the Tax Court, which did not address any issues of state law.

### **III**

**AFFIRMED.**

Entered for the Court

Carlos F. Lucero  
Circuit Judge