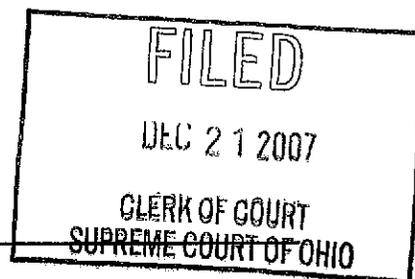


IN THE SUPREME COURT OF OHIO

Appeal From the Ohio Board of Tax Appeals

Keith A. and Noel P. Brown	:	
	:	
	:	Supreme Court
Appellants,	:	Case No. 2007-1718
v.	:	
	:	Appeal from the
William W. Wilkins,	:	Ohio Board of Tax Appeals
[Richard A. Levin]	:	
Tax Commissioner of Ohio,	:	BTA Case No. 2006-R-1041
	:	
Appellee.	:	

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STATEMENT OF CASE AND FACTS

The present appellants, Keith A. and Noel P. Brown, have appealed as of right from a BTA decision affirming the appellee Tax Commissioner. They seek for this Court to overturn its previous decisions issued in *Knust v. Wilkins* (2006), 111 Ohio St.3d 331, 2006-Ohio-5791; and, just recently, in *Lovell v. Levin*, Slip Opinion No. 2007-Ohio-6054, issued on November 20, 2007. As correctly held by the BTA in its decision below, the Browns are simply relitigating the very issue resolved by the Court in *Knust*. Moreover, this Court in *Lovell* strongly affirmed *Knust*, and, in the process, expressly rejected the very arguments advanced by the Browns in the present appeal.

The BTA's decision and order fully sets forth the applicable facts pertinent to this appeal, and we, accordingly, incorporate that factual discussion here. Any further facts will be referenced directly to the evidentiary record in the Law and Argument Section which follows.

LAW AND ARGUMENT

Proposition of Law:

Under the relevant federal income tax statutes, the S corporation income of a grantor trust is taxed at the grantor level and, accordingly, is included in the grantor's Ohio adjusted gross income.

Knust v. Wilkins, 111 Ohio St.3d 331, 2006-Ohio-579; *Lovell v. Levin*, Slip Opinion No. 2007-Ohio-6054, followed.

In *Knust*, this Court affirmed the BTA's ruling upholding the Tax Commissioner's position that the income from the portion of a grantor trust corpus constituting shares of an S corporation is taxable to the grantor(s) of the trust, rather than to the trust itself. For the 2000 tax year at issue in that case and in the present one, Ohio did not subject trusts to income taxation. Thus, the Court's ruling in *Knust* effectively eliminated the grantor-trust device as a means for sheltering S corporation income from Ohio personal income taxation. In upholding the BTA's decision, which had summarily affirmed the Tax Commissioner's final determination on the basis of *Knust*, this Court in *Lovell*, strongly reiterated the *Knust* holding.

In *Knust* and *Lovell*, the Court based its affirmance of the BTA and Tax Commissioner on its reading of the "relevant federal statutes," under which, for federal income tax purposes, the income from S corporation shares held in a grantor trust is exempted from taxation at the grantor-trust level, but included in the income of the grantor(s). Additionally, as the BTA likewise rightly recognized in its decision below in the present case, this Court buttressed its holding by noting that the IRS' promulgation of an interpretive regulation, §1.641(c)-1, Title 26, C.F.R., effective December 29, 2000, "reinforces" the plain meaning of those federal income tax statutes. *Decision and Order of the BTA*, quoting *Knust* at ¶30.

In their merit brief filed with this Court, the Brown's propositions of law are premised directly on the same contentions rejected by this Court in *Knust* and *Lovell*. The Browns assert

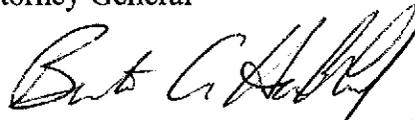
that Section 461(c) of the Internal Revenue Code “conflicts” with the grantor-trust provisions of the Code set forth in Sections 671 through 679, and, therefore, that the federal statutes are “ambiguous.” But this very argument was advanced by the appellant taxpayers in *Knust* and *Lovell* and was rightly rejected by this Court. No such purported “conflict” or “ambiguity” exists. See the Court’s detailed and cogent analysis in *Knust* at ¶¶23-26; and *Lovell* at ¶¶25-33.

CONCLUSION

For all the reasons set forth above, the BTA’s decision upholding the Commissioner’s final determination on the basis of this Court’s decisions in *Knust v. Wilkins* and *Lovell v. Levin* should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Appellee was sent by regular U.S. mail to Michael C. Cohan, Stephen E. Pigott and Kismet R. Wunder, Cavitch, Familo, Durkin & Frutkin Co., L.P.A. 1717 East Ninth Street, 14th Floor, Cleveland, Ohio 44114, Attorneys for Appellants, on this 21st day of December, 2007.



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