

Achilli Vs. United States

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Court : US Supreme Court

Decided On : May-27-1957

Appeal No. : 353 U.S. 373

Appellant : Achilli

Respondent : United States

Judgement :

Achilli v. United States - 353 U.S. 373 (1957)

U.S. Supreme Court Achilli v. United States, 353 U.S. 373 (1957)

Achilli v. United States

Nos. 430 and 834

Argued May 2, 1957

Decided May 27, 1957

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CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

SYLLABUS

Petitioner was indicted, convicted, and sentenced under 145 (b) of the Internal Revenue Code of 1939 for the felony of willfully attempting to evade federal income taxes by filing false and fraudulent returns.

Held: Section 3616(a) of the Internal Revenue Code of 1939, which makes it a misdemeanor for a person to deliver to the Collector

"any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made . . . ,"

does not apply to this offense, and the felony conviction and sentence under 145(b) are sustained. Pp. [353 U. S. 373](#) -379.

234 F.2d 797 affirmed.

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

Petitioner was charged in a three-count indictment under 145(b) of the Internal Revenue Code of 1939, with the felony of willfully attempting to evade federal

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income taxes by filing a false return. [[Footnote 1](#)] Upon conviction, he was sentenced to concurrent two-year prison terms and was fined \$2,000 on each count. The Court of Appeals for the Seventh Circuit reversed the conviction on count one, but affirmed the convictions on counts two and three. 234 F.2d 797. We granted certiorari limited to a question of general importance in the enforcement of the income tax, namely, whether petitioner could be prosecuted and sentenced under 145(b) for an offense claimed by him to be punishable also under 3616(a) of the Internal Revenue Code of 1939. 352 U.S. 1023. [[Footnote 2](#)]

The threshold question is whether the conduct for which petitioner was convicted was an offense under

3616(a). That section made it a misdemeanor for any person to deliver to the Collector

"any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made . . . ,"

and provided maximum penalties of one year in prison and a \$1,000 fine, together with the costs of prosecution. 53 Stat. 440. If the willful filing of a false income tax return was not embraced by 3616(a), petitioner's case falls, and discussion of other issues becomes unnecessary.

Unlike 145(b), which appeared in the income tax chapter of the 1939 Code and was specifically and restrictively designed to punish evasion of that tax, 3616(a) was placed among the Code's "General Administrative Provisions," and was general in scope. Failure explicitly to exclude evasion of the income tax from the scope of 3616(a) is urged as ground for its inclusion, thereby making it a misdemeanor to file a false return with intent to evade the income tax, despite the specific felony provision of 145(b).

As long ago as 1926, it was the Government's position that the predecessor of 145(b) effectively repealed 3616(a)'s applicability to income tax evasion. See brief for the United States pp. 16-19, in *United States v. Noveck*, [273 U. S. 202](#) . To be sure, during the last five years, the Government prosecuted a small number of minor offenses, we are told less than seven per cent of the criminal income tax evasion cases involving the filing of false returns, as misdemeanors under 3616(a). More recently, a series of cases brought the relation of 145(b) to 3616(a) into focus, and called for an interpretative analysis of the history of these sections in order to ascertain their respective functions. And so now, for the first time, has the Government made a detailed survey of the problem of alleged overlapping between 3616(a) and 145(b).

Section 3616(a) goes back to the Act of 1798, 1 Stat. 580, 586, when excise taxes and customs duties were the main sources of federal revenue. Being general in scope, this section, as successively reenacted, was applicable to the first federal taxes on income from 1861 to 1871, and again in 1894; there were no separate provisions for punishing income tax evasions. See, e.g., the Act of 1861, 12 Stat. 292, 309; the Act of 1894, 28 Stat. 509, 553.

A different story begins with the income tax legislation that followed the passage of the Sixteenth Amendment. Section II of the Revenue Act of 1913, 38 Stat. 114, 166, contained its own criminal sanctions. Section II(F) proscribed the making of a false return with intent to evade the income tax, an act that would otherwise have been punishable under what was then 3179 of the Revised Statutes of 1874, the immediate predecessor of 3616(a). The offense would have been a misdemeanor under either statute. But II(F) provided a maximum fine of \$2,000, while 3179 only permitted a fine of up to \$1,000. It seems clear that II(F) displaced 3179. Such implied repeal, *pro tanto*, is further demonstrated by the fact that 3167, 3172, 3173 and 3176 of the Revised Statutes, related provisions in the enforcement of the revenue laws, were specifically incorporated, as modified, into II, but 3179 was not. Nor was it incorporated by reference; II(L) made applicable only those administrative and general tax provisions "not inconsistent with the provisions of this section," and 3179 was obviously inconsistent with II(F).

The Revenue Act of 1916, 39 Stat. 756, 775, and the Act of 1917, 40 Stat. 300, 325, offer further evidence that Congress withdrew the income tax from the reach of the general provisions of 3179. Both of those Acts imposed income taxes, proscribed the making of false returns as a misdemeanor, and punished that offense more severely

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than did 3179. [[Footnote 3](#)] In addition to its specific prohibition of false returns, the 1917 Act made it an offense to evade or attempt to evade taxes imposed by it, thereby using for the first time language similar to that subsequently found in 145(b).

In an effort to escape the effect of the scheme for punishing income tax evaders set forth in the 1913, 1916, and 1917 statutes, petitioner claims that the Revenue Act of 1918 made 3179 again applicable to the income tax. Section 253 of Title II, the income tax title, provided in pertinent part:

"Any individual . . . who willfully refuses to pay or collect such [required] tax, to make such return, or to supply such information at the time or times required under this title, or who willfully attempts in any manner to defeat or evade the tax imposed by this title, shall be guilty of a misdemeanor and shall be fined not more than \$10,000 or imprisoned for not more than one year, or both. . . ."

40 Stat. 1057, 1085. Despite 253's addition of the words "in any manner" to the "attempts" clause of the 1917 Act, petitioner contends that the failure of 253 to single out the making of false returns with intent to evade must be attributed to a congressional determination that this particular mode of income tax evasion should be punished under 3179. Plainly enough, such a reading of the Act is untenable. We cannot hold that the classic method of evading the income tax, the filing of a false return, did not constitute an attempt "in any manner to defeat or evade" that tax. This would empty those words of their most obvious content,

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and would produce glaring incongruities. It would mean that Congress, having manifested its desire in the previous revenue laws to punish this offense more harshly than did 3179, inexplicably reversed itself in an Act that heavily increased the punishment for all other forms of obstruction to the income tax. And it would mean that Congress provided a lesser penalty for the making of false returns with intent to evade than for either willful refusal to file, which is usually considered to be a lesser offense, or refusal to file when combined with affirmative acts of evasion such as keeping a double set of books. An explanation of the omission more in harmony with the rational system of tax administration that was the congressional design is that Congress merely tried to speak economically in 1918 and, having prohibited "attempts in any manner" to evade the income tax, found it unnecessary also to proscribe the major kind of attempt.

This interpretation gains further support from the Act of 1924, 43 Stat. 253, 343, which made the last significant alteration of the statutory scheme prior to the 1939 codification. Section 1017(a), subsequently 145(a) of the Code, continued the willful failure to make returns, supply information, or pay taxes as a misdemeanor carrying a penalty of up to one year in prison and a \$10,000 fine. Section 1017(b), the future 145(b), made it a felony, with a maximum penalty of five years in prison and a \$10,000 fine, to attempt "in any manner to evade or defeat any tax imposed by this Act." And 1017(c), later 3793(b) (1) of the Code, created a new offense which made it a felony, with a maximum penalty of five years in prison and \$10,000 fine, for any person willfully to assist in the preparation of a false return. Thus, the 1924 Act, by increasing the punishment for affirmative acts of evasion, made even more pronounced one of the indicated anomalies that petitioner's view would impose. In addition, 1017(c) requires petitioner to impute to Congress

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a desire to punish one who assisted in preparing a false return much more severely than one who actually made the return with intent to evade.

Our duty is to give coherence to what Congress has done within the bounds imposed by a fair reading of legislation. In *Spies v. United States*, [317 U. S. 492](#), the dominant consideration in the Court's unanimous decision relating 145(b) to 145(a) was the avoidance of incongruities analogous to those that would result from petitioner's reading of the sections before us. The evolution of those sections makes clear that, by the time the unconfined language of 3179 became 3616(a) of the 1939 Code, its scope had been shrunk by a series of specific enactments that had the potency of implied repeals. Due regard for appropriate statutory construction calls for such a conclusion in order to harmonize an earlier, generalized statute with later *ad hoc* enactments expressly directed to the collection of income taxes.

In view of our conclusion that 3616(a) did not apply to evasion of the income tax, it becomes unnecessary to consider other contentions advanced by petitioner.

Affirmed.

THE CHIEF JUSTICE and MR. JUSTICE CLARK concur in the result.

[[Footnote 1](#)]

"SEC. 145. PENALTIES."

"(a) Failure of file returns, submit information, or pay tax. Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution."

"(b) FAILURE TO FILE RETURNS, SUBMIT INFORMATION, OR PAY TAX. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

53 Stat. 62-63.

[[Footnote 2](#)]

By the time certiorari was granted, petitioner's sentence had been reduced by the District Court to concurrent one-year prison terms and to a fine of \$1,000 on each of the two affirmed counts. For further details of the history of the case, see 352 U.S. 916 and 353 U.S. 909.

[[Footnote 3](#)]

The 1916 Act provided the same punishment as the Act of 1913. The 1917 Act provided, in addition to the maximum penalties set forth in 3179, a penalty of double the tax evaded.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

I do not see how we can say that Congress withdrew the income tax from the reach of 3616(a). In the 1939 Internal Revenue Code, that section was part of Subchapter B, "Determination of Tax Liability," which was a part of chapter 34, "Information and Returns," which, in turn, was part of Subtitle D, "General Administrative Provisions." Section 61 made applicable to the income tax

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provisions "All administrative special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable. . . ." These administrative provisions include the chapter and subtitle of which 3616(a) is a part. And, by its terms, 3616(a) applies to "any" return. Plainly then, Congress in 1939 considered 3616(a) an instrument for enforcing the income tax.

It takes mental gymnastics to bring this crime out from under 3616(a) and to place it exclusively under 145(b). I would not make the penal consequences of an Act turn on a construction so tenuous. I rebel against it, especially because the construction now adopted sweeps the ground out from under dozens of criminal convictions which the Government has obtained under 3616(a). Between October, 1952, and March, 1957, (when the Government first suggested to this Court that 3616(a) was inapplicable to the income tax), it invoked 3616(a) in 175 cases of alleged income tax evasion. It chose 3616(a), rather than 145(b), where it appeared that the crime was a relatively minor one. Of these 175 cases, 38 remain undisposed of. Of the 133 that went to trial, 117 resulted in pleas of guilty, and 9 in pleas of *nolo contendere*. Seven defendants went to trial, of whom 5 were acquitted and 2 convicted. Of the 128 convicted persons, 26 were sentenced to imprisonment, the rest being fined or given probation or suspended sentences.

Seven of the convicted persons who were sentenced are still incarcerated.

Now it appears that the Government dealt unlawfully with this group of citizens. Those who were convicted on indictments might have to be resentenced. Those who were convicted on informations must be released.

It is no answer to say that the result is "a break" for these defendants. From the statistics submitted to us by the Government, it appears that many of these cases

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were so minor it is difficult to imagine a grand jury returning indictments on them.

I would adhere to the administrative construction that 3616(a) applied to the income tax. Congress apparently was of that view. For when it came to the Internal Revenue Code of 1954, it reenacted 3616(a) as 7207, eliminating the words "with intent to defeat or evade" which had caused the overlap with 145(b). Congress acted, of course, prospectively.

The fact that Congress acted in 1954 to remove the ambiguity with which we deal today indicates that what we do is not within the judicial competence.