

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-1021**September Term, 2018****USTC-16585-18W****Filed On: May 30, 2019**

Roy J. Meidinger,

Appellant

v.

Commissioner of Internal Revenue Service,

Appellee

ON APPEAL FROM THE UNITED STATES TAX COURT**BEFORE:** Tatel, Millett, and Rao, Circuit Judges**J U D G M E N T**

This appeal was considered on the record from the United States Tax Court and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the Tax Court's November 5, 2018 order dismissing appellant's petition for failure to state a claim be affirmed. The Tax Court correctly concluded that, because the Internal Revenue Service did not initiate an "administrative or judicial action" in response to the information provided by appellant, appellant was not entitled to a whistleblower award pursuant to 26 U.S.C. § 7623(b)(1). See Meidinger v. C.I.R., 559 Fed. Appx. 5, 6 (D.C. Cir. 2014) (per curiam); Simmons v. C.I.R., 523 Fed. Appx. 728, 729-30 (D.C. Cir. 2013) (per curiam). Appellant's assertion that the district court was required to conduct discovery to determine whether the Internal Revenue Service initiated an action based on his information was not raised in the district court, and he has therefore forfeited that argument. See Flynn v. C.I.R., 269 F.3d 1064, 1068-69 (D.C. Cir. 2001) ("Generally, an argument not made in the lower tribunal is deemed forfeited and will not be entertained absent exceptional circumstances."). The Tax Court also correctly concluded that it lacked authority to order the Internal Revenue Service to initiate such an action. See Meidinger, 559 Fed. Appx. at 6; Cohen, 550 Fed. Appx. 10, 11 (D.C. Cir. 2014) (per curiam); Simmons, 523 Fed. Appx. at 729.

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The remainder of appellant's arguments on appeal are similarly unavailing. Insofar as he seeks to pursue a breach of contract claim against the Internal Revenue Service, such a claim is properly filed in the U.S. Court of Federal Claims. See 28 U.S.C. § 1491(a)(1) ("The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded . . . upon any express or implied contract with the United States . . ."); see also Meidinger, 559 Fed. Appx. at 6. Furthermore, appellant's argument that the motion to dismiss in the Tax Court was improperly filed lacks merit.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam