

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 11-15968  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MAY 29, 2012 JOHN LEY CLERK
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D.C. Docket No. 1:11-cv-02665-RLV

DERALD L. STOVALL,  
by Deborah Talbot, Executrix,

Plaintiff - Appellant,

versus

UNITED STATES OF AMERICA,  
by and through the Commissioner  
of Internal Revenue Service,

Defendant - Appellee.

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Appeal from the United States District Court  
for the Northern District of Georgia

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(May 29, 2012)

Before PRYOR, JORDAN and ANDERSON, Circuit Judges.

PER CURIAM:

Deborah Talbot, the executrix of Derald Stovall's estate, appeals the dismissal without prejudice of Stovall's complaint for refunds for tax years 2002 and 2006. See 28 U.S.C. § 1346(a)(1). We affirm.

The Service assessed taxes against Stovall for tax year 2002 after he failed to submit a tax return with a proper signature. The Service later reduced Stovall's 2002 tax liability by the amount that he overpaid for tax year 2006. Stovall owed part of the assessment for tax year 2002 when he filed his complaint.

The district court lacked subject-matter jurisdiction, 28 U.S.C. § 1346(a)(1), over Stovall's complaint for a refund for tax year 2002 because he had yet to make a "full payment of the assessment." Flora v. United States, 362 U.S. 145, 177, 80 S. Ct. 630, 647 (1960). In the light of the unpaid balance of the assessment, Stovall also could not challenge the decision of the Service to "designate the application of [Stovall's] overpayment[]" in 2006 to his liability for tax year 2002. In re Ryan, 64 F.3d 1516, 1524 (11th Cir. 1995).

We **AFFIRM** the dismissal of Stovall's complaint.