

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Civil Action No. 3:13-cv-00549**

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

FRED D. GODLEY, JR., a/k/a Fred D. Godley, Jr. as)
Administrator, C.T.A of the Estate of)
Fred O. Godley and individually;)

GREGORY GODLEY, as former Co-Executor)
of the Estate of Fred O. Godley and individually;)

LISA GODLEY GILSTRAP, as former)
Co-Executor of the Estate of Fred O. Godley)
and individually;)

KIMBERLY GODLEY, as former)
Co-Executor of the Estate of Fred O. Godley, and)
individually;)

RODNEY GODLEY, as Trustee of)
the Fred O. Godley Revocable Trust, and)
individually;)

MARTHA GODLEY, individually;)
WILLIAM C. GODLEY, individually;)
ROBERT GODLEY, individually;)
DAVID GODLEY, individually;)
CATHY GODLEY MATTHEWS, individually;)
IVY GODLEY BRUCE, individually;)
MARK GODLEY individually; and)
PETER GODLEY, individually,)

Defendants.)

**DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Defendants in the above captioned case, Gregory Godley, Lisa Godley Gilstrap, Kimberly Godley, Rodney Godley, William C. Godley, Robert Godley, Ivy Godley Bruce, Mark

Godley, Peter Godley, Cathy Godley Matthews, David Godley, and Martha Godley (all of the above captioned Defendants other than Fred D. Godley, Jr., the “movant Defendants”), hereby respectfully move the Court, pursuant to Federal Rule of Civil Procedure 56, for an Order of Summary Judgment against the Plaintiff, the United States of America, and for dismissal of Plaintiff’s claims against said movant Defendants with prejudice. As grounds for this Motion, and in support thereof, the movant Defendants hereby show unto this Court as follows:

1. Plaintiff sued the movant Defendants and Fred D. Godley, Jr., for past due federal estate taxes and interest and penalties thereon, imposed upon the estate (the “Estate”) of Fred O. Godley (the “Decedent”), who died over twenty-four (29) years ago, on May 11, 1990 (Complaint, ¶ 12). Plaintiff filed its Complaint with the Court on September 27, 2013. Plaintiff’s tax collection claims against the Defendants are based on various legal theories.

2. The movant Defendants, together with Defendant Fred D. Godley, Jr., were the heirs of the Decedent (Complaint, ¶¶ 5-19) and beneficiaries of the Estate. Three of the beneficiaries, Defendants Gregory Godley, Lisa Godley Gilstrap, and Kimberly Godley, were the original co-executors of the Estate (Complaint, ¶¶ 6, 13).

3. In the fall of 1994, the Estate inheritances were settled with all beneficiaries other than Fred D. Godley, Jr. (Complaint, ¶ 38-43; Joint Answer and Crossclaim (Doc. 3), ¶¶ 42-46) following prior federal estate tax payments by the Estate to the Internal Revenue Service (the “IRS”) in the total amount of \$227,875 (Complaint, ¶¶ 27, 31, 32, 35). Those taxes were apportioned to all the Estate beneficiaries, and their final distributions from the Estate took those taxes into account (Ex. 5, Aff. of H. Morrison Johnston). Final distributions were made to the Defendant beneficiaries in 1994, with one key exception (Complaint, ¶¶38-39).

4. The exception to the final distributions to Estate beneficiaries at the end of 1994, was that Defendant Fred D. Godley, Jr. asked to keep the Estate open to resolve a dispute with the IRS over the valuation and federal tax treatment of certain elderly housing general partnership interests (Monroe Housing for the Elderly, Rocky Mount Housing for the Elderly, Clinton Housing for the Elderly, Charlotte Housing for the Elderly and the manager of those entities, the Godley Management Association (“GMA”) partnership) that Fred D. Godley, Jr. alone inherited from the Decedent (Joint Answer and Crossclaim (Doc. 3), ¶¶ 28, 36). Fred D. Godley, Jr. also wanted to obtain deferred installment payment terms for any additional estate taxes the Estate might owe under section 6166 of the Internal Revenue Code, which allows up to fifteen (15) years to make installment payments of estate taxes (Joint Answer and Crossclaim (Doc. 3), ¶ 28).

5. With approval by the Mecklenburg County Clerk of Court Estates Division, the original three (3) co-executors resigned on or about December 29, 1994, made inheritance distributions net of their share of estate taxes to the beneficiaries other than Fred D. Godley (Ex. 5, Aff. of H. Morrison Johnston) and turned the Estate’s ongoing administration over to Fred D. Godley, Jr. as successor fiduciary, who was named as the Administrator C.T.A. of the Estate. As part of the resignation, the original co-executors set aside and turned over \$443,916 of Estate assets to Fred D. Godley, Jr., not in his personal beneficiary capacity, but in his capacity as Administrator C.T.A. of the Estate for use in administering the Estate and satisfying its creditors, including for payment of estate taxes (Joint Answer and Crossclaim (Doc. 3), ¶¶ 45, 46).

6. Attached as Exhibit 5 is an affidavit from H. Morrison Johnston, the attorney who handled the administration of the Estate from the time of the Decedent’s death until the Estate administration was turned over to Fred D. Godley, Jr. at the end of 1994. Mr. Johnston states

that pro-rata federal and state inheritance taxes were factored into the determination of the inheritance shares determined in 1994 for each beneficiary of the Estate, based on estate assets values which they inherited at that time.

7. After the Mecklenburg County Clerk's acceptance of the resignation by the original co-executors and the transfer of the \$443,916 balance of assets in the Estate over to Fred D. Godley, Jr., none of the movant Defendants had anything at all to do with the Estate or its administration or its tax matters. All Estate matters after December 29, 1994 were handled solely by Fred D. Godley, Jr. under the terms of the Clerk's order. None of the movant Defendants had any remaining rights or obligations after December 29, 1994. Attached as Exhibits 6 to 17 are Affidavits of the movant Defendants in support of these facts.

8. Fred D. Godley, Jr. did not inform the movant Defendants of any of his actions regarding the Estate after December 29, 1994 (Joint Answer and Crossclaim (Doc. 3), ¶ 178; Answer of Fred D Godley, Jr. to Crossclaim (Doc. 11), ¶ 151), because all of the Estate's matters had been completely transferred to him by the Mecklenburg County Clerk of Court, and the movant Defendants had no further interest in the Estate, nor did Fred D. Godley have any obligation as Administrator C.T.A. to keep any of the movant Defendants informed (Exhibits 6 to 17, Affs. of the movant Defendants).

9. In 2001, following a trial presented by Fred D. Godley, Jr. and his counsel, the U.S. Tax Court determined that the elderly housing partnership interests inherited solely by Fred D. Godley, Jr. were properly valued for federal estate tax purposes at \$806,196 rather than \$50,000, as originally reported on the Estate's Form 706 estate tax return, (Complaint, ¶¶ 49, 50; Joint Answer and Crossclaim (Doc.3), ¶ 52). The Tax Court's ruling resulted in an additional

assessment of federal estate tax by the IRS against the Estate of \$247,714, which was recorded on August 1, 2001 (Complaint, ¶ 52).

10. After the turnover of the Estate administration in 1994 to Fred D. Godley, Jr. and prior to May 28, 2013, Plaintiff did not correspond in any manner with any of the movant Defendants regarding any taxes due from the Estate (Exhibits 6 to 17, Affidavits of the movant Defendants). During that time, the movant Defendants were not aware of any estate tax delinquency regarding the Estate and they were in no manner informed of any such default or any IRS correspondence to that effect by Fred D. Godley, Jr., as he admits in his Answer to the Cross Claim of the movant Defendants (Answer To Crossclaim of Fred D. Godley, Jr. (Document 11), ¶ 151). Supporting affidavits of the movant Defendants other than Fred D. Godley, Jr., included with this motion as Exhibits 6-17 show that for the period of time from December 29, 1994 until May 28, 2013, none of the Defendants received any type of notice from the IRS that any tax problem or outstanding delinquent tax liability of the Estate existed. Documents reflecting such notice to the movant Defendants' have been requested by the movant Defendants in discovery from the Plaintiff, but no such notice documents have been produced.

11. The said movant Defendants assert that the delays of the IRS in notifying them of any federal estate tax liability delinquency of the Estate being past due since October 3, 1994, or of any default by the Estate in 2001 or 2002 were unreasonable, fundamentally unfair and a violation of their due process rights, as more fully asserted in the accompanying Defendants' Brief in Support of the Motion for Summary Judgment.

12. Attached as Exhibit 1 is a true and authentic copy of an IRS tax collection billing, titled "Statement of Tax Due IRS" and dated October 15, 2001, which was provided recently to the movant Defendants' counsel by C. Wells Hall, counsel for Defendant Fred D. Godley, Jr.

Mr. Hall represented to the undersigned counsel that Fred D. Godley, Jr. indicated to Mr. Hall that Fred D. Godley, Jr. had personally received this "Statement of Tax Due IRS" shortly after October 15, 2001 from the IRS, and that the billing notice further states "Please return a copy of this notice with your payment." Enclosed as Exhibit 4, is an Affidavit of Fred D. Godley, Jr. further identifying the October 15, 2001 IRS collection letter (the "October 2001 Notice"). No payment was made by the Estate or Fred D. Godley, Jr. in response to this notice of tax payment due because the IRS received no further payments whatever after October 3, 1994 (Complaint, ¶ 35). The amount stated as then currently due in the October 2001 Notice at that time was \$177,177 of taxes out of the total amount of estate taxes owed, and there was no installment payment deferral in effect with respect to the \$177,177, which was therefore then currently due in full and in default.

13. Attached as Exhibit 2 is a true and authentic copy of an IRS tax collection letter from the IRS dated September 18, 2002, and provided recently to the movant Defendants' counsel by C. Wells Hall, counsel for Defendant Fred D. Godley, Jr. Mr. Hall represented to the undersigned counsel that Fred D. Godley, Jr. indicated to Mr. Hall that Fred D. Godley, Jr. had personally received the September 18, 2002 collection letter from the IRS shortly after September 27, 2002 (the "September 2002 Notice"). Exhibit 4, attached, is the Affidavit of Fred D. Godley, Jr. further identifying the September 2002 Notice. No payment was made by the Estate or Fred D. Godley, Jr. in response to this collection letter (Complaint, ¶ 35).

14. The movant Defendants assert that both the October 2001 Notice and the September 2002 Notice are notices and demands from the IRS, or legally tantamount to notices and demand from the IRS, for the payment of federal estate taxes under section 6303(a) of the Internal Revenue Code.

15. The Estate was in default as provided in the September 2002 Notice no later than September 18, 2002, and Fred D. Godley, Jr., C.T.A., thereafter failed on behalf of the Estate to make payment of estate taxes, interest and penalties of \$41,565.09, as demanded by the IRS in its notice and demand by the September 2002 Notice, or earlier on or about October 15, 2001, when the Estate failed to make payment as demanded in the "Statement of Tax Due IRS" sent to Fred D. Godley, Jr. by the IRS in its October 2001 Notice. Thereafter, the Estate remained in default of payment of federal estate taxes, forfeited its right to make estate tax installment payments under section 6166 of the Internal Revenue Code, and there was not a cure of the estate tax delinquency as to either of such amounts due. Plaintiff moreover admits in its Complaint that, and there is no dispute, that that Estate made no further payment of any federal estate taxes, interest or penalties to the IRS after October 3, 1994, and that, at that time, the amount of currently assessed taxes that were underpaid (and as movant Defendants submit were in default) were in the amount of \$42,862 of non-deferred taxes only, not counting accrued interest or later imposed taxes (Complaint, ¶ 35).

16. Under section 6502 of the Internal Revenue Code, the statute of limitations available to the IRS for the collection of past due taxes under section 6502 of the Internal Revenue Code is ten (10) years from the date of assessment and runs from that date, unless the statute of limitations is suspended. In the case of a section 6166 installment agreement, under sections 6166(g)(3)(A) and 6503(d) of the Internal Revenue Code, the statute of limitations provided in section 6502 begins to run on the date of issuance of notice and demand for payment if the estate is in default of its installment agreement. The tenth anniversary of the notice and demand of the September 2002 Notice was not later than September 18, 2012, as more fully elaborated in Defendants' Brief in Support filed together herewith. Alternatively, the statute of

limitations began to run after October 15, 2001 when the Estate was in default of the estate taxes then due in the amount of \$177,177, until October 15, 2011, so the ten (10) year statute of limitations under the October 2001 Notice on October 15, 2001 expired on October 15, 2011.

17. The ten (10) year statute of limitations applicable to Plaintiff's claims expired at the latest on September 18, 2012, or earlier on or around October 15, 2011, and bars Plaintiff's claims against the said Defendants filed in federal court after either of those dates. Plaintiff filed its Complaint on September 27, 2013, after the expiration of the statute of limitations under section 6502(a)(2) of the Internal Revenue Code.

18. There is no genuine issue of material fact with respect to the two issues of statute of limitations and due process, and the movant Defendants are entitled to judgment as a matter of law.

19. The movant Defendants request that the Court retain plenary and ancillary jurisdiction of their Crossclaims for indemnity, damages and reimbursement of costs and attorney's fees pending against Defendant Fred D. Godley, Jr.

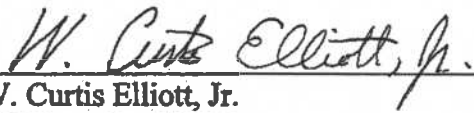
WHEREFORE, the movant Defendants pray that the Court grant their Motion for Summary Judgment against the Plaintiff United States, and to dismiss Plaintiff's claims against the Defendants other than Fred D. Godley, Jr. with prejudice.

RESPECTFULLY submitted, this th24 day of October, 2014.

W. CURTIS ELLIOTT, JR.

COUNSEL FOR DEFENDANTS

Gregory Godley, Lisa Godley Gilstrap, Kimberly Godley, Rodney Godley, William C. Godley, Robert Godley, Ivy Godley Bruce, Mark Godley, Peter Godley, Cathy Godley Matthews, David Godley, and Martha Godley



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CERTIFICATE OF SERVICE

This is to certify that I have this 24th day of October, 2014, served a copy of the foregoing *Motion For Summary Judgment*, as indicated below upon the named persons:

- (x) Served via CM/ECF e-mail Service
- () By delivering a copy personally
- () By leaving a copy at the office of such person
- () By telecopying said papers as indicated below
- () By depositing a copy of same in an overnight delivery carrier drop box, as addressed below
- () By depositing a copy of same in the United States mail, postage prepaid, addressed as show below
- () By depositing a copy of same in the United States mail, postage prepaid, addressed as show below and by electronic mail
- () By depositing a copy of same in the United States mail, certified mail, return receipt requested, addressed as shown below

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