

1 Shaper, Appellant, v. Tracy, Tax Commr., Appellee.

2 [Cite as *Shaper v. Tracy* (1996), _____ Ohio St.3d _____.]

3 *Civil procedure -- Judgments -- Valid, final judgment rendered upon*
4 *the merits bars all subsequent actions based upon any claim*
5 *arising out of the transaction that was the subject matter of the*
6 *previous action.*

7 (No. 95-389 -- Submitted April 30, 1996 -- Decided August 7, 1996.)

8 Appeal from the Board of Tax Appeals, No. 93-X-1032.

9 This is the second of two actions which Serene G. Shaper has
10 appealed to this court. This appeal results from the Board of Tax Appeals'
11 ("BTA's") denial of Shaper's claims for personal income tax refunds.

12 Prior to filing her refund claims with the Tax Commissioner, Shaper
13 filed a declaratory judgment action with the Cuyahoga County Common
14 Pleas Court, which was later transferred to the Franklin County Common
15 Pleas Court. The Franklin County court denied Shaper's motion for
16 summary judgment. Shaper appealed to the Franklin County Court of
17 Appeals, which affirmed the common pleas court. *Shaper v. Tracy* (1994),
18 97 Ohio App.3d 760, 647 N.E.2d 550. A discretionary appeal and cross-
19 appeal to this court were not allowed. *Shaper v. Tracy* (1995), 71 Ohio

1 St.3d 1477, 647 N.E.2d 1257. Shaper subsequently filed a petition for a
2 writ of certiorari with the United States Supreme Court, which was denied
3 on October 2, 1995. *Shaper v. Tracy* (1995), 516 U.S. ___, 116 S.Ct. 274,
4 133 L.Ed.2d 195.

5 At the same time Shaper filed her notice of appeal in the instant case,
6 she also filed a motion to consolidate this appeal with her then pending
7 appeal of the declaratory judgment action. In her motion to consolidate
8 Shaper stated, “[b]oth appeals involve the same legal issues” and “the same
9 issues are raised in both appeals * * *.” The tax years at issue in both
10 appeals are the same.

11 The commissioner filed a motion to dismiss or affirm the BTA’s
12 decision based upon *res judicata* and/or collateral estoppel. We denied the
13 commissioner’s motion, stating that *res judicata* raises merit questions that
14 are to be resolved in a merit decision. *Shaper v. Tracy* (1995), 73 Ohio
15 St.3d 1211, 654 N.E.2d 1268.

16 This cause is now before this court upon an appeal as of right.

1 MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK
2 and SHERCK, JJ., concur.

3 JAMES R. SHERCK, J., of the Sixth Appellate District, sitting for
4 STRATTON, J.

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