

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 07 2011

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**UNITED STATES OF AMERICA,**

Plaintiff-Appellee,

v.

**MARCON, INC., et al,**

Respondents-Intervenors -  
Appellants.

No. 10-36108

D.C. No. 1:10-CV-502-EJL

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Idaho  
Edward J. Lodge, District Judge, Presiding

Submitted October 13, 2011\*\*  
Seattle, Washington

Before: **KOZINSKI**, Chief Judge, **PAEZ**, Circuit Judge, and **COLLINS**, District  
Judge.\*\*\*

Taxpayers MarCon, Inc. and Elaine Martin appeal the district court's denial of

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. See Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Raner C. Collins, United States District Judge for the  
District of Arizona, sitting by designation.

their motion to intervene in a summons enforcement action brought by the IRS against a third-party record keeper. We review the denial of a motion to intervene in enforcement proceedings *de novo*. S. Cal. Edison Co. v. Lynch, 307 F.3d 794, 802 (9th Cir. 2002).

The parties agree that our affirmance of the district court in MarCon, Inc. v. United States, No. 10-35464 (9th Cir. Oct. 13, 2011), renders this action moot. See Calderon v. Moore, 518 U.S. 149, 150 (1996) (per curiam) (“[A]n appeal should ... be dismissed as moot when, by virtue of an intervening event, a court of appeals cannot grant any effectual relief whatever in favor of the appellant[.]”) (internal quotation marks omitted); Pitts v. Terrible Herbst, Inc., 653 F.3d 1081, 1086-87 (9th Cir. 2011) (A case is moot “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome” of the litigation). Accordingly, we dismiss the appeal.

**DISMISSED.**