9 T.C. 346 (1947)

A taxpayer's failure to allege errors in the Commissioner's determination of a tax deficiency, separate from a claim for relief under Section 722 of the Internal Revenue Code, warrants dismissal of the case regarding that deficiency for failure to prosecute.

Summary

Ideal Packing Company petitioned the Tax Court contesting deficiencies in excess profits tax and the disallowance of a claim for refund under Section 722 of the Internal Revenue Code. The petition disputed the amount of the deficiency but presented no factual allegations or claims of error related to the deficiency itself, focusing solely on the Section 722 relief claim. The Commissioner moved to dismiss the proceeding concerning the deficiency, citing failure to prosecute. The Tax Court granted the Commissioner's motion, holding that the taxpayer's failure to challenge the underlying deficiency determination justified dismissal.

Facts

Ideal Packing Company, an Ohio corporation, filed excess profits tax returns for the fiscal years ending October 31, 1943, and 1944. The Commissioner determined deficiencies in excess profits tax for those years and disallowed the company's claim for relief under Section 722. The company's petition to the Tax Court contested the disallowance of the Section 722 claim but did not allege any errors in the Commissioner's calculation of the underlying tax deficiencies. The deficiency notice was mailed May 1, 1946.

Procedural History

The Commissioner determined deficiencies in excess profits tax and disallowed Ideal Packing Company's claim for relief under Section 722. The Company appealed to the Tax Court. The Commissioner moved to dismiss the portion of the proceeding relating to the deficiency for the fiscal year ended October 31, 1943. The Tax Court granted the Commissioner's motion to dismiss regarding the deficiency.

Issue(s)

Whether the Tax Court should dismiss a proceeding related to a tax deficiency when the taxpayer fails to allege any errors in the Commissioner's determination of the deficiency, exclusive of any claim for relief under Section 722 of the Internal Revenue Code.

Holding

Yes, because the taxpayer did not claim the Commissioner erred in computing the deficiency and raised no issue regarding it, exclusive of any possible benefit under

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Section 722.

Court’s Reasoning

The court reasoned that Section 722 is a relief provision that provides for an adjustment downward of the tax computed without the benefit of the relief. The taxpayer must first establish that the excess profits tax computed without Section 722 results in an excessive and discriminatory tax. “Section 722 (d) provides that, except as provided in section 710 (a) (5), ‘the taxpayer shall compute its tax, file its return and pay the tax shown on its return under this subchapter without the application of this section.'” The court noted it has no jurisdiction to consider a claim for relief under Section 722 in a proceeding based entirely upon a notice of deficiency, if the Commissioner never rejected by proper notice a claim for such relief. The court emphasized the taxpayer must raise some error on the part of the respondent in computing a deficiency under subchapter E without the benefit of Section 722, or there is no proper ground or basis for denying the respondent the right to assess and collect the deficiency.

Practical Implications

This case clarifies the procedural requirements for challenging tax deficiencies in conjunction with Section 722 relief claims. Taxpayers must specifically challenge the underlying deficiency calculation, independent of their Section 722 claim, to avoid dismissal for failure to prosecute. The case highlights the importance of carefully examining the notice of deficiency and raising specific objections to the Commissioner’s determinations in the petition. This ruling influences how tax attorneys frame their arguments in Tax Court, ensuring that all potential errors in the deficiency calculation are explicitly raised to preserve the taxpayer’s right to contest the full tax liability. It also reinforces that seeking Section 722 relief does not automatically suspend the obligation to address the accuracy of the underlying tax assessment.

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