12 T.C. 589 (1949)

When the IRS fully considers and disallows a claim for refund on its merits, despite the claim being filed prematurely, the Tax Court retains jurisdiction to review the disallowance.

Summary

Industrial Yarn Corp. filed applications for relief under Section 722 of the Internal Revenue Code for 1941 and 1942, before fully paying the assessed excess profits tax. The IRS considered the applications, held conferences, and ultimately disallowed the claims on their merits, issuing a notice of disallowance under Section 732. The Tax Court addressed whether it had jurisdiction despite the premature filing. The Court held it did have jurisdiction because the IRS's actions constituted a waiver of the formal requirement of prior full payment of the tax. The IRS examined and disallowed the claim on the merits. Therefore the Tax Court could review the IRS's decision.

Facts

Industrial Yarn Corporation filed claims for refund under Section 722 for the years 1941 and 1942 on November 15, 1943.

For 1941, the company stated that excess profits tax of $3,442.56 had been paid when filing the application. However, the tax was paid later.

For 1942, the company stated $10,949.80 in excess profits tax had been paid prior to filing the application. The amended petition alleges the actual amount paid was $16,424.70 prior to filing the claim. The full amount of $22,150.18 was paid in December 1943.

The Commissioner disallowed the claims on May 16, 1946, without objecting to the timing of the claims.

Procedural History

The Commissioner disallowed Industrial Yarn's claims for refund under Section 722.

Industrial Yarn petitioned the Tax Court for a determination of overpayment of excess profits tax.

The Commissioner moved to dismiss for lack of jurisdiction, arguing that the claims were filed prematurely because the full tax had not been paid when the applications were filed.

Issue(s)

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Whether the Tax Court has jurisdiction under Section 732 of the Internal Revenue Code to review the disallowance of a claim for refund under Section 722, when the claim was filed before full payment of the excess profits tax, but the Commissioner considered the claim on its merits and disallowed it.

Holding

Yes, because the Commissioner's consideration and disallowance of the claim on its merits constituted a waiver of the requirement of prior full payment, thus conferring jurisdiction on the Tax Court.

Court's Reasoning

The Court relied on the Supreme Court's decision in *Angelus Milling Co. v. Commissioner, 325 U.S. 293*, which held that if the Commissioner chooses not to stand on formal requirements and investigates the merits of a claim, they cannot later invoke technical objections.

The Court emphasized that the notice of disallowance stated that the Commissioner had given careful consideration to the application, reports of examination, protests, and statements made in conferences.

The notice explicitly stated that the claims for refund were disallowed, and that notice was given in accordance with Section 732, the jurisdictional statute. The Court stated, "How could it be plainer that the petitioner was considered as having presented, and the Commissioner considered as having passed upon and disallowed, the refund claim required by Section 732 for jurisdiction in this Court?"

The Court concluded that the Commissioner waived the requirement of prior payment in the regulation when, reciting and knowing of the assessment of tax, he issued a notice that the claims for refund contained in Form 991 were disallowed and that notice was given in accordance with Section 732.

Practical Implications

This case illustrates that the IRS can waive its own procedural rules regarding tax refund claims by considering the claim on its merits, even if the taxpayer has not strictly complied with those rules.

Attorneys should argue that the IRS's actions constitute a waiver if the IRS has reviewed a claim's substance despite procedural defects and then denied the claim. A thorough review on the merits can prevent the IRS from later claiming a lack of jurisdiction.

The Tax Court will likely have jurisdiction if the IRS provides a final disallowance, on the merits, of the refund claim.

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