13 T.C. 92 (1949)

A notice of disallowance of a tax refund claim under Section 722 of the Internal Revenue Code must be sent by registered mail to the taxpayer in order for the Tax Court to have jurisdiction over a subsequent petition.

Summary

Midtown Catering Company sought relief under Section 722 of the Internal Revenue Code for excess profits tax. The Commissioner disallowed the claim, and the company petitioned the Tax Court. The Commissioner moved to dismiss for lack of jurisdiction, arguing that the disallowance notice wasn't a statutory notice because it wasn't sent by registered mail. The Tax Court agreed, holding that the registered mail requirement is mandatory for the court to have jurisdiction, and the letter not sent via registered mail could not be considered an authorized notice of disallowance.

Facts

- Midtown Catering Company filed a claim for relief under Section 722 of the Internal Revenue Code for the taxable year ending June 30, 1944.
- The IRS initially disallowed the claim, and Midtown did not petition the Tax Court.
- Midtown filed new claim forms.
- The Excess Profits Tax Council reviewed the new claims and determined the prior disallowance was correct.
- The Chairman of the Excess Profits Tax Council sent Midtown a letter stating the new claims would not be further considered, and that the letter was not a statutory notice of disallowance. This letter was sent via regular mail, not registered mail.

Procedural History

- Midtown Catering Company filed a petition with the Tax Court, arguing the letter from the Excess Profits Tax Council constituted a notice of disallowance.
- The Commissioner of Internal Revenue moved to dismiss the petition for lack of jurisdiction.
- The Tax Court granted the Commissioner's motion and dismissed the case.

Issue(s)

1. Whether the letter from the Chairman of the Excess Profits Tax Council constituted a statutory notice of disallowance under Section 732(a) of the Internal Revenue Code.
2. Whether the Tax Court has jurisdiction over a petition based on a notice of disallowance that was not sent by registered mail, as required by Section 732(a) of the Internal Revenue Code.

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Holding

1. No, because the letter was not sent by registered mail as required by statute.
2. No, because the statute requires the notice to be sent by registered mail for the Tax Court to have jurisdiction.

Court's Reasoning

The court reasoned that Section 732(a) of the Internal Revenue Code explicitly requires the Commissioner to send notice of disallowance by registered mail. The statute states that the taxpayer has 90 days after "such notice is mailed" to file a petition with the Tax Court. Citing *Botany Worsted Mills v. United States, 278 U.S. 282*, the court emphasized the principle that "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." Because the notice was not sent by registered mail, it could not be considered a valid notice of deficiency. The Court stated, "It is thus apparent that Congress, in enacting section 732 (a), intended to follow the same jurisdictional requirements as that required with respect to other tax cases over which the Tax Court has jurisdiction… in that a petition should be bottomed upon the notice of the action of the Commissioner sent by registered mail."

Practical Implications

This case establishes a strict requirement for the IRS to send notices of disallowance via registered mail for the Tax Court to have jurisdiction. Attorneys must ensure that the IRS complied with this requirement before filing a petition with the Tax Court. Failure to do so will result in the petition being dismissed for lack of jurisdiction. This case emphasizes the importance of strict adherence to statutory requirements in tax law. Subsequent cases have consistently upheld the registered mail requirement as a prerequisite for Tax Court jurisdiction, reinforcing the need for practitioners to verify compliance before proceeding with litigation.

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