22 T.C. 385 (1954)

Section 3801 of the Internal Revenue Code, which mitigates the effect of the statute of limitations, is not applicable when the Commissioner, rather than the taxpayer, maintains an inconsistent position.

Summary

The Heer-Andres Investment Company (petitioner), an accrual-basis taxpayer, reported rental income in the fiscal year it was payable, not when it was due. The Commissioner of Internal Revenue initially determined a deficiency for 1946, finding the income should have been reported in 1946, not 1947, as the taxpayer had done. In a subsequent proceeding, the Commissioner attempted to assess a deficiency for 1945, arguing the income should have been recognized that year. The Tax Court held the Commissioner's action was barred by the statute of limitations. The Court found that the Commissioner, not the taxpayer, had maintained the inconsistent position necessary to invoke the mitigation provisions of Section 3801 of the Internal Revenue Code, which would have allowed him to bypass the statute of limitations.

Facts

Heer-Andres Investment Co. leased property to Heer's, Inc. The lease included minimum rent plus additional rent based on Heer's, Inc.'s sales. Heer-Andres, using the accrual method, reported the additional rent in the fiscal year it was payable, which was the year following the period to which it related. In a prior proceeding, the Commissioner determined that the additional rent should have been reported in the year it was earned. The statute of limitations had run on the year 1945. The Commissioner then attempted to assess a deficiency for 1945, arguing that the additional rent payable in February 1945 was income for the 1945 tax year. The petitioner claimed that the assessment was time-barred.

Procedural History

The case involves a series of disputes with the IRS over the correct timing of income recognition for additional rent. The Tax Court had previously decided an earlier case (Docket No. 28148, reported at 17 T.C. 786) concerning the tax years 1946 and 1947. The current proceeding involves a deficiency determination by the Commissioner for the 1945 tax year, which the taxpayer challenged. The U.S. Tax Court ruled in favor of the taxpayer, stating the statute of limitations barred the deficiency assessment.

Issue(s)

1. Whether the Commissioner's adjustment to the petitioner's income tax for the year ended January 31, 1945, was authorized by Section 3801(b)(3) of the Internal Revenue Code?

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Holding

1. No, because the Commissioner, not the taxpayer, maintained the inconsistent position required to invoke the mitigation provisions of Section 3801.

Court’s Reasoning

The court focused on whether the conditions of Section 3801, which mitigates the statute of limitations, were met. The court cited the Senate Finance Committee report, which stated that corrective adjustments should

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