***Sorin v. Commissioner*, 29 T.C. 975 (1958)**

When the Commissioner's deficiency notice is sufficiently general, the taxpayer bears the burden of proving that a specific tax provision (like Section 117(m) of the Internal Revenue Code of 1939, concerning collapsible corporations) does not apply, especially when the underlying facts suggest the provision's relevance.

Summary

The Tax Court addressed the issue of burden of proof in a tax deficiency case involving the application of Section 117(m), concerning collapsible corporations. The Commissioner issued a general deficiency notice, asserting that distributions to the taxpayers were taxable at ordinary income tax rates. The taxpayers argued that the Commissioner needed to specifically invoke Section 117(m) and bear the burden of proving its applicability. The court held that since the Commissioner's notice was broad enough to encompass potential application of Section 117(m) and the underlying facts of the case supported this, the taxpayers were required to demonstrate that Section 117(m) did not apply. Because they failed to present sufficient evidence to negate the application of Section 117(m), the Court found in favor of the Commissioner. This decision underscores the importance of a taxpayer's responsibility to provide evidence to rebut the presumptive correctness of a tax deficiency, particularly when the initial notice is not overly specific but is consistent with the government's ultimate theory.

Facts

Henrietta A. Sorin received a $50,000 distribution from Garden Hills, Inc. The Sorins reported the distribution as a capital gain on their 1950 tax return. The Commissioner issued a deficiency notice stating the distribution was "taxable at ordinary income tax rates." The notice did not explicitly cite a specific section of the Internal Revenue Code. At trial, the Commissioner asserted that Section 117(m), concerning collapsible corporations, applied to the distribution. The Sorins contended that the Commissioner had the burden of proving Section 117(m)'s applicability. Evidence presented included stipulations about the basis of the stock and the nature of the corporation's activities.

Procedural History

The case was heard by the Tax Court, where the central issue was the allocation of the burden of proof. The Sorins contended that the Commissioner had the burden of proving that Section 117(m) applied. The Tax Court ultimately found that the burden rested on the Sorins to show that Section 117(m) was inapplicable. The Court sided with the Commissioner.

Issue(s)

1. Whether the Commissioner's deficiency notice, stating that the distribution was

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taxable at ordinary income tax rates, was sufficiently specific to place the burden of proof on the Commissioner to demonstrate the applicability of Section 117(m), concerning collapsible corporations.

2. Whether the Sorins had the burden to prove that Section 117(m) did not apply.

Holding

1. No, because the deficiency notice was general enough, and the underlying facts presented at trial supported the applicability of Section 117(m), the burden did not shift to the Commissioner.

2. Yes, because the Commissioner's initial notice was broad enough to allow reliance on Section 117(m), the burden fell on the Sorins to demonstrate that Section 117(m) was inapplicable.

Court's Reasoning

The Court distinguished the case from prior cases where the Commissioner's deficiency notice specifically referenced a particular provision (like Section 22(a)). In those situations, the Court noted that the Commissioner would bear the burden of proof if they later attempted to assert a different, undisclosed, or previously unmentioned, basis for the deficiency. The Court stated, "It is one thing for respondent to pinpoint the basis of his determination as he did in the Wilson and Weaver cases. In that situation it is not reasonable to permit him, without notice, to rely on some different and previously undisclosed ground." However, where, as here, the deficiency notice was broadly stated and consistent with multiple potential tax code provisions, the presumptive correctness of the Commissioner's determination remained, shifting the burden to the taxpayer. The court found the language was appropriate for a controversy under Section 117(m), meaning the Sorins needed to prove that it didn't apply. The court emphasized that the Commissioner's notice stated the distribution was taxable at ordinary income tax rates, which was consistent with Section 117(m) and the taxpayers' failure to prove their basis.

Practical Implications

This case emphasizes the importance of taxpayers carefully reviewing tax deficiency notices and the underlying facts of their case to determine the appropriate allocation of the burden of proof. Taxpayers should be prepared to rebut the presumption of correctness that attaches to the Commissioner's determination, especially where the notice is not narrowly tailored. The case highlights that if the Commissioner's initial notice is broadly worded, taxpayers bear the burden of proving the inapplicability of specific tax provisions. Legal practitioners must advise clients about the strategic importance of presenting sufficient evidence to counter the Commissioner's assertions, and it also underscores the need to analyze the

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implications of a tax deficiency notice. If a taxpayer believes a notice is too vague, it is better to seek clarification before trial, as the Court emphasized in this case.

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