47 T.C. 329 (1966)

Strict adherence to statutory deadlines for tax elections is required, and the timely mailing rule hinges on the official postmark date, not the deposit date, even for seemingly minor delays.

Summary

Feldman Furniture Co. attempted to elect subchapter S status but mailed Form 2553 on October 31, 1960, for the tax year ending September 30, 1961. Although deposited before the deadline, the post office postmarked it November 1, 1960. The Tax Court held the election untimely because the postmark date was after the deadline. The court emphasized the explicit and demanding nature of tax election deadlines set by Congress, refusing to grant leniency despite the minimal delay and potential harsh outcome for the taxpayer. This case underscores the importance of meeting precise filing deadlines in tax law, as determined by the official postmark.

Facts

- Feldman Furniture Co., Inc. operated on a fiscal year ending September 30.
- Joseph Feldman owned all the corporation's stock.
- The corporation intended to elect subchapter S status for the tax year ending September 30, 1961.
- Form 2553, electing subchapter S status, was prepared and signed by Mr. Feldman as president.
- An employee of the corporation's accountant deposited Form 2553 in a U.S. Post Office mail slot in Easton, MD, between 7 and 9 PM on October 31, 1960.
- Due to postal procedures in Easton, mail deposited after 7 PM was postmarked the following day.
- The Form 2553 received a postmark of November 1, 1960, 3:00 AM.
- The deadline for filing the subchapter S election for the tax year ending September 30, 1961, was October 31, 1960.
- Feldman claimed net operating losses from the corporation on his personal income tax returns for 1961 and 1962, predicated on the subchapter S election.

Procedural History

- The Commissioner of Internal Revenue determined deficiencies in Feldman's income tax for 1958-1962, disallowing the net operating loss deductions.
- Feldman petitioned the Tax Court to contest the deficiencies.
- The Tax Court reviewed the timeliness of the subchapter S election.

Issue(s)

1. Whether Feldman Furniture Co., Inc. filed a timely election to be treated as a subchapter S corporation for the taxable year 1961 under Section 1372(c)(1) of

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the Internal Revenue Code of 1954.
2. If the 1961 election was untimely, whether the same filing could be considered a timely election for the taxable year 1962.

Holding

1. No, because the election was not postmarked on or before the statutory deadline of October 31, 1960.
2. No, because no separate election was filed during the prescribed period for the 1962 taxable year.

Court's Reasoning

- **Statutory Requirements:** Section 1372(c)(1) and related regulations explicitly require a subchapter S election to be filed within a specific timeframe. Regulation Section 1.1372-2(a) mandates filing Form 2553.
- **Timely Mailing Rule (Section 7502):** Section 7502 of the IRC dictates that timely mailing is treated as timely filing, but this hinges on the "date of the United States postmark stamped on the cover." Regulation Section 301.7502-1(c)(iii)(a) clarifies that if the postmark date is after the deadline, the filing is untimely, regardless of deposit date.
- **Application to Facts:** The Form 2553 was postmarked November 1, 1960, which is after the October 31, 1960 deadline for the 1961 tax year election. Therefore, the election was untimely, even though deposited before the deadline.
- **Rejection of Uniformity Argument:** Feldman argued nonuniform application because Philadelphia post office procedures would have resulted in an October 31 postmark. The court dismissed this, stating uniform application of the law is required, not uniform postal procedures across different locations.
- **1962 Election Argument Rejected:** The court rejected the argument that the untimely 1961 election could be valid for 1962. A valid 1961 election would have continued for subsequent years. Since the 1961 election failed, a new election was required for 1962 within the 1962 statutory period, which did not occur.
- **Precedent:** The court cited *William Pestcoe, 40 T.C. 195* and *Simons v. United States, 208 F. Supp. 744 (D. Conn. 1962)*, emphasizing the strict enforcement of tax election deadlines, even when results seem harsh. As quoted from *Simons*, "this Court cannot grant an extension of time where the Congress has specifically set out the time within which the election had to be made and filed."

Practical Implications

- **Strict Compliance:** Taxpayers must strictly adhere to all statutory deadlines for elections and filings. Even minor delays due to postal service procedures can invalidate an election.

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- **Postmark Date is Critical:** The official postmark date is the determining factor for timely filing under Section 7502. Taxpayers bear the risk of postal delays or post office procedures that result in a late postmark, regardless of when the document is deposited.
- **No Leniency for Missed Deadlines:** Courts generally do not grant leniency for missed tax election deadlines, even if the delay is minimal or due to circumstances beyond the taxpayer's direct control. The statutes are considered explicit and demanding.
- **Planning and Early Filing:** Legal professionals and taxpayers should advise clients to file tax elections and other critical documents well in advance of deadlines to avoid postal delays and ensure timely filing based on the postmark rule.
- **Continuing Validity of Strict Rule:** *Feldman v. Commissioner* remains a key case illustrating the strict interpretation of tax filing deadlines and the importance of the postmark rule, consistently applied in subsequent cases involving various tax elections and filings.

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