Barnes Theatre Ticket Service, Inc. v. Commissioner, 50 T. C. 28 (1968)

An appeal bond in a tax case can be reduced below the customary amount only if the taxpayer provides alternative security that assures payment of any deficiency and interest ultimately determined by the appellate courts.

Summary

In Barnes Theatre Ticket Service, Inc. v. Commissioner, the U. S. Tax Court rejected the petitioners' request to reduce their appeal bond to 25% of the deficiency. The petitioners claimed that purchasing a full bond would cause undue hardship due to their ownership of substantial real estate. The court held that mere ownership of property does not provide the necessary security to justify reducing the bond amount. The decision underscores that any alternative to a full bond must guarantee the IRS's ability to collect the deficiency and interest as finally determined by appellate courts.

Facts

Barnes Theatre Ticket Service, Inc. and Florence M. Barnes were assessed a tax deficiency of $147,512. 08 by the Tax Court. They intended to appeal the decision and requested the appeal bond be set at 25% of the deficiency. The petitioners claimed ownership of real estate worth approximately $400,000, arguing that purchasing a full bond would be expensive and a forced sale of their property to pay the deficiency would result in a loss of value.

Procedural History

The Tax Court issued its opinion on December 18, 1967, and entered its decision on February 12, 1968. The petitioners then filed a motion requesting a reduced appeal bond amount.

Issue(s)

1. Whether the Tax Court should reduce the customary amount of an appeal bond to 25% of the deficiency based on the petitioners' ownership of real estate?

Holding

1. No, because the petitioners failed to provide adequate security to assure the IRS of payment of any deficiency and interest as finally determined by the appellate courts.

Court's Reasoning

The court relied on Section 7485 of the Internal Revenue Code, which requires a bond not exceeding double the deficiency to stay assessment and collection. The

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customary practice is to set the bond at the full deficiency amount plus interest. The court emphasized that the purpose of the bond is to guarantee payment of any deficiency finally approved by appellate courts. While the court occasionally reduces bond amounts when alternative security is provided, the petitioners' mere claim of real estate ownership, without proof of ownership or value and without a lien in favor of the government, did not meet this standard. The court noted, "Clearly, the mere ownership of property does not establish the security of payment that is comparable to the furnishing of an appeal bond and that justifies the reduction of the customary amount of such bond. "

Practical Implications

This decision clarifies that taxpayers seeking a reduced appeal bond must provide concrete, verifiable security that assures the IRS of payment of any deficiency and interest. Merely owning assets is insufficient; the assets must be proven, unencumbered, and subject to a lien in favor of the government. Tax practitioners should advise clients to provide detailed financial information and potentially secure their assets with a government lien when requesting bond reductions. This case has been cited in subsequent decisions to support the principle that alternative security must be as reliable as a full bond. It impacts how tax professionals approach appeals and bond negotiations, emphasizing the need for thorough preparation and documentation.

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