Mitchell Offset Plate Service, Inc. v. Commissioner, 53 T. C. 235 (1969)

Evidence of timely mailing creates a presumption of delivery for Subchapter S election and shareholder consents.

Summary

In Mitchell Offset Plate Service, Inc. v. Commissioner, the Tax Court addressed whether the corporation had effectively elected Subchapter S status for tax years ending March 31, 1963, and 1964. The court found that the corporation's timely mailing of the election and shareholder consents established a presumption of delivery, which the IRS failed to rebut with evidence of non-receipt. The decision clarified that timely mailing creates a presumption of filing, impacting how such elections are treated in future cases. The court also determined that the corporation's shareholders received constructive dividend income, as they conceded this point in their reply brief.

Facts

Mitchell Offset Plate Service, Inc. (Mitchell) was incorporated on April 13, 1959, and advised to elect Subchapter S status. The election (Form 2553) and shareholder consents were prepared and mailed before the required deadline. In July 1959, additional shares were issued to minor children, and their consents were also mailed timely. Despite the IRS's inability to locate these documents in their files during audits, Mitchell maintained it had properly filed the election and consents.

Procedural History

The IRS issued a notice of deficiency asserting that Mitchell did not qualify as a Subchapter S corporation for the tax years ending March 31, 1963, and 1964, due to the absence of the election and consents in their records. Mitchell contested this in the Tax Court, leading to a trial where the court considered the evidence of mailing and the IRS's inability to locate the documents.

Issue(s)

1. Whether Mitchell timely filed its Subchapter S election and shareholder consents, thereby qualifying as a Subchapter S corporation for the tax years in question.
2. Whether Sam and Beatrice Weiss received constructive dividend income from Mitchell in the amounts determined by the IRS.

Holding

1. Yes, because the evidence of timely mailing created a presumption of delivery that the IRS failed to rebut.
2. Yes, because the petitioners conceded that if Mitchell qualified as a Subchapter S corporation, the amounts determined by the IRS were taxable as constructive

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dividends.

Court’s Reasoning

The court applied the legal rule that timely mailing establishes a presumption of delivery. It found that the testimony of Mitchell’s accountant and shareholders about the mailing of the election and consents was sufficient to create this presumption. The IRS’s inability to locate these documents in its files did not constitute sufficient evidence to rebut this presumption, especially given the newness of Subchapter S procedures and the subsequent reorganization of IRS files. The court also considered policy considerations, emphasizing the importance of facilitating the use of Subchapter S elections by not imposing overly stringent filing requirements. There were no notable dissenting or concurring opinions. The court quoted from *Jones v. United States*, stating that the mailing evidence created a “strong presumption of delivery. “

Practical Implications

This decision reinforces the importance of timely mailing in establishing the filing of Subchapter S elections and consents. Practitioners should document the mailing process thoroughly to establish this presumption. The decision affects how similar cases are analyzed, emphasizing the burden on the IRS to rebut the presumption of delivery. It also highlights the need for the IRS to maintain organized and accessible records of such filings. Later cases, such as *Rosengarten v. United States*, have applied this ruling, confirming its impact on legal practice in this area. Businesses seeking Subchapter S status should be aware of the potential for administrative errors by the IRS and take steps to ensure their filings are properly documented.

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