Cowan v. Commissioner, 54 T. C. 647 (1970); 1970 U. S. Tax Ct. LEXIS 177

The 90-day period for filing a petition with the Tax Court starts from the mailing date of a deficiency notice, not affected by brief absences from the U. S. or oral statements from IRS employees.

Summary

In Cowan v. Commissioner, the Tax Court dismissed the petition for lack of jurisdiction because it was filed 93 days after the IRS mailed a deficiency notice, exceeding the statutory 90-day limit. Jules Cowan argued that his brief visit to Mexico on the mailing date should extend the filing period to 150 days and that IRS employees' statements misled him about the deadline. The court rejected these arguments, clarifying that temporary absence from the U. S. does not extend the filing period, and oral statements from IRS employees do not constitute a remailing of the notice. This ruling reinforces the strict application of the 90-day rule for deficiency notices and the importance of timely filing petitions.

Facts

On May 7, 1969, the IRS mailed a deficiency notice to Jules and Yetta Cowan determining tax deficiencies and additions for the years 1960-1964. Jules Cowan was in Tijuana, Mexico, from 9 a. m. to 7:30 p. m. that day. He received the notice on May 12 upon returning to his office. After conversations with IRS employees, Cowan believed he had until August 6 to file a petition. However, he filed on August 8, 93 days after the mailing, resulting in the IRS's motion to dismiss for lack of jurisdiction.

Procedural History

The IRS filed a motion to dismiss the petition on September 19, 1969, for lack of jurisdiction due to late filing. The Tax Court set a deadline for objections and, after a hearing on January 28, 1970, issued its decision on March 26, 1970, dismissing the petition for both petitioners.

Issue(s)

1. Whether Jules Cowan's presence in Mexico on the day the deficiency notice was mailed extended his filing period to 150 days?
2. Whether statements from IRS employees effectively remailed the deficiency notice, extending the filing deadline?

Holding

1. No, because the court found that temporary absence from the U. S. does not extend the filing period under section 6213(a).
2. No, because oral statements by IRS employees do not constitute a remailing of

the notice, and the filing period remains 90 days from the original mailing date.

Court's Reasoning

The court applied section 6213(a), which provides a 90-day filing period for deficiency notices, extendable to 150 days only if the notice is addressed to a person outside the U. S. The court reasoned that the purpose of the 150-day extension was to account for potential delays in receipt, not applicable to brief absences like Cowan's. The court cited *Mindell v. Commissioner* and *Estate of William Krueger* to support its interpretation that temporary absence does not qualify for the extension. Regarding the IRS employees' statements, the court held that such oral communications do not constitute a remailing or extend the statutory period. The court emphasized that the notice itself clearly informed Cowan of the 90-day period, and he should have calculated the deadline independently. The court dismissed the petition for both petitioners, noting that Yetta Cowan did not contest her dismissal.

Practical Implications

This decision underscores the strict adherence to the 90-day filing rule for tax deficiency notices. Taxpayers must file petitions within 90 days of the mailing date, regardless of brief absences from the U. S. or oral statements from IRS employees. Legal practitioners should advise clients to carefully monitor mailing dates and not rely on informal communications for deadlines. The ruling may influence how taxpayers and their attorneys approach deficiency notices, emphasizing the importance of timely filing to maintain jurisdiction. Subsequent cases like *Portillo v. Commissioner* have cited Cowan to uphold the 90-day rule, reinforcing its practical significance in tax litigation.

