59 T.C. 246 (1972)

A petition to the Tax Court must be filed within 90 days of the mailing of the notice of deficiency, and the burden of proving timely filing, including proper postmarking, rests with the petitioner.

Summary

Angelo Vitale petitioned the Tax Court to contest deficiencies determined by the Commissioner of Internal Revenue. The Commissioner moved to dismiss for lack of jurisdiction, arguing the petition was untimely. The Tax Court considered whether the petition was filed within the statutory 90-day period from the mailing of the notice of deficiency. The court held that Vitale's petition was not timely filed because it was received by the court more than 90 days after the notice was mailed, and Vitale failed to prove the petition was postmarked within the 90-day period due to an illegible postmark and lack of proper mailing procedures. Consequently, the Tax Court granted the Commissioner's motion to dismiss for lack of jurisdiction.

Facts

The Commissioner of Internal Revenue determined income tax deficiencies for Angelo Vitale for the years 1967 and 1968 and mailed a notice of deficiency. Vitale, through his counsel, attempted to file a petition with the U.S. Tax Court to dispute these deficiencies.

Procedural History

The Commissioner moved to dismiss Vitale's petition for lack of jurisdiction, asserting it was not timely filed. The Tax Court held a hearing on the motion to dismiss.

Issue(s)

1. Whether the petition was filed with the Tax Court within 90 days of the mailing of the notice of deficiency, as required by Section 6213(a) of the Internal Revenue Code.

2. Whether the petitioner met his burden of proving timely filing when the postmark on the petition envelope was illegible and proper mailing procedures were not followed.

Holding

1. No, because the petition was received by the Tax Court more than 90 days after the notice of deficiency was mailed.

2. No, because the illegible postmark and failure to use certified mail or properly

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registered mail meant the petitioner could not rely on the timely mailing rule.

Court's Reasoning

The Tax Court relied on Section 6213(a) of the Internal Revenue Code, which mandates that a petition must be filed within 90 days from the mailing of the notice of deficiency for the court to have jurisdiction. The court found the Commissioner's evidence credible that the notice was mailed on October 27, 1971, based on standardized mailing procedures and a certified mail sheet with a postal stamp dated October 27, 1971. The petition was received by the Tax Court more than 90 days after this date.

Regarding the timeliness of mailing, the court noted that while Section 7502(a)(1) provides a timely mailing is treated as timely filing, this relies on a legible postmark. Treasury Regulations Section 301.7502-1(a) and (c)(1) state that the postmark date is deemed the filing date. When the postmark is illegible, as in this case, the burden shifts to the petitioner to prove timely postmarking, as per Section 301.7502-1(c)(iii)(a) and precedent like *Alexander Molosh*, 45 T.C. 320 (1965). Vitale's counsel's testimony about mailing the petition was deemed uncertain, especially since the petition was verified the day after the supposed mailing date. Furthermore, Vitale did not use certified mail or properly registered mail (sender's receipt not postmarked), which could have provided definitive proof of mailing date under regulations. The court concluded, "We hold that petitioner has not sustained his burden of proving that the petition was postmarked on or before January 24."

Practical Implications

Vitale v. Commissioner underscores the critical importance of adhering to the strict deadlines for filing petitions with the Tax Court and maintaining meticulous proof of timely filing. For legal practitioners, this case serves as a reminder to: 1) Calendar the 90-day deadline precisely from the notice of deficiency mailing date. 2) Utilize certified mail or registered mail with properly postmarked receipts when filing Tax Court petitions to establish irrefutable proof of mailing date. 3) Ensure petitions are verified before mailing to avoid discrepancies in mailing date evidence. This case is frequently cited to emphasize the jurisdictional nature of the 90-day filing deadline and the petitioner's burden of proof in demonstrating timely filing, particularly when relying on the timely mailing rule.

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