60 T.C. 296 (1973)

Failure by the IRS to send a copy of a notice of deficiency to a taxpayer's attorney, as suggested by the Administrative Procedure Act, does not invalidate the notice of deficiency itself when properly mailed to the taxpayer.

Summary

The Alfieris contested a tax deficiency, arguing that the notice was invalid because the IRS failed to send a copy to their attorney, violating the Administrative Procedure Act (APA). The Tax Court held that while the APA suggests sending notices to attorneys, non-compliance does not invalidate a deficiency notice properly sent to the taxpayers. The court reasoned that the IRS's failure was a harmless error, as the attorney was aware of the notice and filed a timely petition. The court upheld the deficiency, prioritizing the validity of the notice to the taxpayer over procedural suggestions regarding attorney notification under the APA.

Facts

Charles and Jean Alfieri filed a joint tax return for 1968.

In November 1970, attorney Thomas J. Carley informed the IRS that he represented the Alfieris regarding their 1968 tax return, citing 5 U.S.C. § 500.

In February 1971, the IRS mailed a notice of deficiency to the Alfieris at their correct address but did not send a copy to Carley.

The Alfieris, through attorney Carley, filed a petition with the Tax Court contesting the deficiency and claiming a refund, arguing the deficiency notice was invalid due to the lack of notice to their attorney.

Procedural History

The IRS issued a notice of deficiency.

The Alfieris petitioned the Tax Court for redetermination, challenging the validity of the notice and the underlying deficiency.

The Tax Court heard the case.

Issue(s)

1. Whether the IRS's failure to send a copy of the notice of deficiency to the Alfieris' attorney, after being notified of representation under 5 U.S.C. § 500, invalidates the notice of deficiency properly mailed to the Alfieris.

Holding

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1. No, because the statutory requirement for a valid notice of deficiency is met when it is properly mailed to the taxpayer, and the Administrative Procedure Act's suggestion to notify the attorney does not override this requirement. The error, if any, was harmless because the attorney received the notice and filed a timely petition.

Court's Reasoning

The court emphasized that under 26 U.S.C. § 6212, a valid deficiency notice requires proper mailing to the taxpayer's last known address. This statutory requirement was met.

The court acknowledged 5 U.S.C. § 500(f) of the Administrative Procedure Act, which states that when a party is represented by counsel, notice should be given to the representative in addition to the party. However, the court interpreted this provision as directory rather than mandatory in invalidating a deficiency notice.

The court cited *Jack D. Houghton, 48 T.C. 656 (1967)*, noting that the purpose of 5 U.S.C. § 500 is to ensure attorneys can represent clients before agencies without needing special agency admissions, not to alter the statutory requirements for deficiency notices.

The court reasoned that even if the failure to notify the attorney was an error, it was harmless because the attorney became aware of the notice and filed a timely petition. Referencing *Saint Paul Bottling Co., 34 T.C. 1137 (1960)*, the court stated that harmless errors can be waived by filing a petition.

The court also cited *Vincent O. Nappi, Jr., 58 T.C. 282 (1972)*, clarifying that the APA applies to "agencies" and not directly to the Tax Court itself, which is a court established under Article I of the Constitution.

The court concluded that the IRS's failure to send a copy to the attorney did not make the deficiency notice arbitrary or invalid, especially since the taxpayers were not demonstrably harmed.

Practical Implications

Alfieri v. Commissioner clarifies that while agencies should ideally notify attorneys who have filed notices of appearance, failure to do so does not automatically invalidate actions like a notice of deficiency, provided statutory requirements for notice to the taxpayer are met.

This case emphasizes that procedural suggestions in the APA do not override specific statutory requirements in the Internal Revenue Code regarding tax deficiency notices.

Legal practitioners should ensure IRS compliance with notification procedures but

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understand that a technical failure to notify counsel, absent demonstrable harm to the client, is unlikely to invalidate an otherwise proper notice of deficiency.

Subsequent cases have cited *Alfieri* to support the principle that procedural errors not affecting the taxpayer's ability to contest a deficiency are often considered harmless, maintaining the Tax Court's jurisdiction.

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