Hosking v. Commissioner, 62 T. C. 635 (1974)

A taxpayer's late election for income averaging can be considered timely if made during a Tax Court trial, even if not previously filed within statutory time limits, provided the taxpayer's actions have been consistent and not detrimental to the IRS.

Summary

Louis Hosking sought to use income averaging for his 1968 tax year during a Tax Court trial, despite not having previously elected this method within the statutory time frame. The IRS argued that his election was untimely because he had not filed a valid tax return or made the election within two years of the tax being deemed paid. The Tax Court held that Hosking's election was timely because it was made before the tax year was closed for adjustment and his actions were consistent with seeking income averaging benefits. However, the court found that Hosking was not entitled to a refund of any overpayment resulting from income averaging due to statutory limitations on refunds.

Facts

Louis Hosking lodged a Form 1040 for 1968 that lacked sufficient information to be considered a valid return, only showing his personal details and a claimed overpayment of $128. 40. He did not initially elect to use income averaging, nor did he attach the required Schedule G. During his 1973 Tax Court trial, Hosking elected to use income averaging for the first time, presenting computations that showed a lower tax liability for 1968 than that determined by the IRS.

Procedural History

The IRS issued a notice of deficiency to Hosking for the 1968 tax year, determining a deficiency of $2,023. 15, offset by withheld taxes of $1,810. 51, resulting in a net deficiency of $212. 64. Hosking filed a petition with the Tax Court contesting this deficiency and asserting entitlement to a refund based on income averaging. The Tax Court considered whether Hosking's election for income averaging was timely and whether he was entitled to a refund.

Issue(s)

1. Whether Hosking's election to use income averaging for the 1968 tax year, made for the first time at the Tax Court trial, was timely.
2. If the election was timely, whether Hosking was entitled to a refund for any overpayment of tax for the 1968 tax year.

Holding

1. Yes, because Hosking's election was made before the tax year was closed for adjustment and his prior actions were consistent with seeking the benefits of income

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averaging.
2. No, because Hosking did not meet the statutory requirements for a refund under section 6512(b)(2), as he had not paid the tax within the specified period or filed a proper claim for refund within two years of the tax being deemed paid.

Court's Reasoning

The court interpreted section 1304(a) as permissive, allowing a taxpayer to elect income averaging at any time before the expiration of the period for claiming a refund, which includes during a Tax Court trial. The court noted that Hosking's actions were consistent with seeking income averaging benefits, as he had claimed an overpayment on his Form 1040, and his late election did not disadvantage the IRS. The court also cited prior cases where late elections were upheld when consistent with the taxpayer's overall position. However, the court found that Hosking was not entitled to a refund because he did not meet the requirements of section 6512(b)(2), which necessitated payment of the tax within a specific timeframe or the filing of a proper claim for refund within two years of payment. The court emphasized that Hosking's Form 1040 did not constitute a claim for refund based on income averaging, as it lacked the necessary detail and factual basis required by the regulations.

Practical Implications

This decision establishes that taxpayers may elect income averaging during a Tax Court trial, provided their actions have been consistent and the election does not disadvantage the IRS. Practitioners should advise clients that while a late election may be upheld, it does not guarantee a refund of any resulting overpayment if statutory refund requirements are not met. The case underscores the importance of filing valid returns and timely claims for refund to preserve refund rights. Additionally, this ruling may influence how the IRS handles similar cases, potentially leading to more flexibility in accepting late elections during litigation. Subsequent cases may reference Hosking when addressing the timeliness of elections and the interplay between tax court jurisdiction and statutory refund limitations.

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