Millsap v. Commissioner, 66 T. C. 738 (1976)

A taxpayer can use evidence beyond the postmark to establish the timeliness of a Tax Court petition when the postmark is illegible.

Summary

In Millsap v. Commissioner, the Tax Court allowed a taxpayer to use external evidence to prove timely mailing of a petition against a notice of deficiency, despite an illegible postmark. The court found the taxpayer's testimony credible and consistent, establishing that the petition was mailed within the statutory 90-day period. This case underscores the importance of external evidence in cases of illegible postmarks and sets a precedent for accepting such evidence in determining the timeliness of tax court filings.

Facts

The Commissioner sent a notice of deficiency to the petitioner on April 8, 1976, for the 1973 tax year. The petitioner mailed a petition to the Tax Court, which was received on July 12, 1976. The envelope's postmark was from July 1976, but the day was illegible. The statutory 90-day filing period ended on July 7, 1976. The petitioner testified that he mailed the petition on July 6, 1976, after 10 p. m. , and provided notes on the envelope to support his claim.

Procedural History

The Commissioner moved to dismiss the case for lack of jurisdiction due to the petition being filed outside the 90-day period. The Tax Court considered whether the petition was timely under section 7502(a) of the Internal Revenue Code, which deems a document timely if postmarked within the statutory period.

Issue(s)

1. Whether a taxpayer can use evidence beyond the postmark to establish the timeliness of a Tax Court petition when the postmark is illegible.

Holding

1. Yes, because the court found the petitioner's testimony credible and consistent, establishing that the petition was mailed within the statutory 90-day period.

Court's Reasoning

The court relied on section 7502(a) of the Internal Revenue Code, which allows a document to be considered timely if postmarked within the statutory period. However, since the postmark was illegible, the court turned to section 301. 7502-1(c) of the regulations, which places the burden on the taxpayer to prove the

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timeliness of the mailing. The court cited precedent cases like Molosh v. Commissioner and Sylvan v. Commissioner, which allowed the use of external evidence to establish the postmark date. The court found the petitioner's testimony credible and consistent, noting his notation on the envelope and the timing of his mailing. The court also considered the testimony of a postal official but found it did not contradict the petitioner's account. The court concluded that the petitioner had met his burden of proof, allowing the petition to be considered timely filed.

Practical Implications

This decision establishes that taxpayers can use evidence beyond the postmark to prove the timeliness of Tax Court petitions when the postmark is illegible. Practitioners should advise clients to keep detailed records of mailing, including any notes or evidence that can support the date of mailing. This case also highlights the importance of credible testimony in establishing facts in tax disputes. Subsequent cases have followed this precedent, reinforcing the acceptability of external evidence in similar situations. Businesses and individuals facing tax disputes should be aware of this ruling when filing petitions against notices of deficiency.

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