Lewy v. Commissioner, 68 T. C. 779 (1977)

A taxpayer temporarily in the U. S. when a deficiency notice is mailed but departing immediately thereafter is entitled to 150 days to file a petition with the Tax Court if their absence delays receipt of the notice.

Summary

Claude Lewy, a French resident with a New York apartment and office, was in the U. S. when a tax deficiency notice was mailed to him but left for France the next day, delaying receipt until his return. The Tax Court held that Lewy was entitled to 150 days to file a petition under IRC section 6213(a), as his temporary presence did not negate his usual foreign residence. This decision emphasizes that the 150-day rule applies when a taxpayer's absence from the U. S. delays notice receipt, not merely their location at the moment of mailing.

Facts

Claude Lewy, a French resident and attorney, maintained an office and apartment in New York. On November 11, 1976, while in New York preparing to depart for France, a tax deficiency notice was mailed to his New York apartment. Lewy left for France on November 12, 1976, and did not receive the notice until his return on February 1, 1977. He filed a petition with the Tax Court on February 10, 1977, 91 days after the notice was mailed.

Procedural History

The Commissioner of Internal Revenue moved to dismiss Lewy's petition for lack of jurisdiction, arguing it was filed beyond the 90-day limit under IRC section 6213(a). Lewy contended he was entitled to 150 days as he was outside the U. S. when the notice was sent. The Tax Court considered the motion and ultimately denied it, holding that Lewy had 150 days to file.

Issue(s)

1. Whether a taxpayer, present in the U. S. when a deficiency notice is mailed but departing immediately thereafter, is entitled to 150 days to file a petition with the Tax Court under IRC section 6213(a).

Holding

1. Yes, because the taxpayer's temporary presence in the U. S. did not negate his usual foreign residence, and his departure the day after the notice was mailed resulted in delayed receipt, thus entitling him to the 150-day filing period.

Court's Reasoning

The Tax Court rejected a mechanical interpretation of IRC section 6213(a) that would focus solely on the taxpayer's location at the moment of mailing. Instead, it emphasized the congressional purpose of the 150-day rule, which is to assist taxpayers whose receipt of deficiency notices is delayed due to absence from the U. S. The court cited cases like *Mindell v. Commissioner* and *Degill Corp. v. Commissioner* to support its view that the key factor is whether absence from the U. S. delays receipt of the notice. The court noted that Lewy's departure the day after the notice was mailed made it virtually certain he would not receive it before leaving, justifying the 150-day filing period. The court also dismissed the Commissioner's arguments that Lewy's profession or the availability of the notice to his representative should limit his filing time, as these factors do not mitigate the delay caused by his absence.

Practical Implications

This decision clarifies that the 150-day filing period under IRC section 6213(a) applies not only to taxpayers permanently outside the U. S. but also to those temporarily present at the time of mailing but departing immediately thereafter, if their absence delays receipt of the deficiency notice. Practitioners should advise clients who are foreign residents but temporarily in the U. S. to consider their departure plans when a deficiency notice is expected, as they may still qualify for the extended filing period. This ruling may affect IRS practices in sending notices to taxpayers with dual residences, ensuring they are aware of potential delays in receipt. Subsequent cases have followed this reasoning, emphasizing the importance of the actual delay in notice receipt over the taxpayer's location at the moment of mailing.