***Shapiro v. Commissioner, 73 T. C. 313 (1979)***

Courts cannot release funds seized under a jeopardy assessment to pay for a taxpayer's litigation costs, including attorney fees, due to the Anti-Injunction Act and due process considerations.

**Summary**

In Shapiro v. Commissioner, the U. S. Tax Court addressed whether funds seized by the IRS under a jeopardy assessment could be released to cover litigation costs, including attorney fees. The court held that such release was not permissible under the Anti-Injunction Act and due process principles. The decision hinged on the lack of a constitutional right to release seized funds for litigation expenses and the need to ensure the government's ability to collect taxes promptly. This ruling underscores the tension between a taxpayer's right to effective legal representation and the government's interest in securing tax revenues.

**Facts**

The IRS asserted tax deficiencies against Samuel Shapiro for the years 1970-1973, alleging income from narcotics dealings. On December 6, 1973, the IRS issued a jeopardy assessment and seized $35,000 of Shapiro's assets. Shapiro requested the release of $15,000 from these seized funds to cover litigation costs, arguing he had no other assets available. The court found that neither Shapiro nor his co-petitioner had sufficient assets or income to pay for these costs at the time of the hearing.

**Procedural History**

The IRS issued deficiency notices and a jeopardy assessment against Shapiro, leading to the seizure of $35,000. Shapiro filed a motion in the U. S. Tax Court to release $15,000 of these funds for litigation costs. The court heard arguments and testimony regarding Shapiro's financial position before issuing its decision.

**Issue(s)**

1. Whether the U. S. Tax Court can order the release of funds seized under a jeopardy assessment to pay for a taxpayer's litigation costs, including attorney fees?

**Holding**

1. No, because the Anti-Injunction Act and due process considerations prohibit the release of such funds for litigation costs until after the litigation concludes.

**Court's Reasoning**

The court's decision was grounded in the Anti-Injunction Act (Section 7421(a)), which prohibits suits to restrain the assessment or collection of taxes. The court

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noted that the only way to avoid this act's impact is to show irreparable injury and that the government could not prevail under any circumstances. Shapiro failed to meet this standard. The court also considered the due process clause of the Constitution, holding that a fair trial determination can only be made post-trial. It cited numerous cases where courts have refused to release seized funds for litigation costs, emphasizing that there is no constitutional right to funds for counsel of one's choosing. The court also dismissed Shapiro's Sixth Amendment argument, as it applies only to criminal prosecutions. The court concluded that the All Writs Act could not override the specific prohibitions of the Anti-Injunction Act.

**Practical Implications**

This decision impacts taxpayers facing jeopardy assessments by limiting their access to seized funds for litigation costs. Attorneys must advise clients that they cannot rely on seized funds to finance their defense against tax deficiencies. This ruling may affect the ability of taxpayers to mount a robust defense, potentially leading to more settlements or defaults due to financial constraints. The decision also reinforces the government's position in collecting taxes promptly, potentially affecting how the IRS approaches jeopardy assessments. Subsequent cases have followed this precedent, maintaining the balance between taxpayer rights and government interests in tax collection.

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