Jacobson v. Commissioner, 73 T. C. 610 (1979)

A taxpayer can claim a theft loss deduction if the loss can be attributed to theft rather than mere disappearance, and the election to file a joint return must be made before a notice of deficiency is mailed if the taxpayer subsequently files a petition with the Tax Court.

Summary

Charlotte Jacobson sought to deduct a theft loss for personal property taken from her home in 1974 and also attempted to file a joint return with her estranged husband after receiving a deficiency notice. The Tax Court allowed the theft loss deduction, finding that the loss was due to theft rather than mere disappearance. However, the court denied the joint return election because Jacobson failed to prove the amended return was mailed before the deficiency notice was issued, as required by I. R. C. sec. 6013(b)(2)(C).

Facts

Charlotte Jacobson left her marital home in Gakona, Alaska, in November 1973 due to marital issues and moved to Seattle. She left her possessions in the home. In June 1974, she returned to Alaska and worked in Paxson, continuing to leave her possessions in Gakona. In September 1974, her estranged husband Charles instructed his girlfriend to clean the house and dispose of Jacobson's belongings, which were removed without Jacobson's knowledge or permission. Jacobson discovered the loss of her possessions, including antiques and personal items valued at $4,000, and sought a theft loss deduction on her 1974 separate tax return. After receiving a deficiency notice on February 11, 1977, Jacobson and Charles attempted to file an amended joint return for 1974, which was received by the IRS on February 16, 1977.

Procedural History

Jacobson filed a separate return for 1974 and received a deficiency notice on February 11, 1977. She and her husband then attempted to file an amended joint return, which was received by the IRS on February 16, 1977. Jacobson petitioned the Tax Court to contest the deficiency and sought to deduct the theft loss and file a joint return.

Issue(s)

1. Whether Jacobson is entitled to deduct $4,000 as a theft loss for 1974.
2. Whether Jacobson and her husband may file an amended joint return for 1974 after a deficiency notice has been mailed to Jacobson and she has filed a petition with the Tax Court.

Holding

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1. Yes, because Jacobson established that her property was stolen in 1974, and her basis in the lost items was at least $4,000, entitling her to a theft loss deduction.
2. No, because Jacobson failed to prove that the amended joint return was mailed on or before February 11, 1977, the date the deficiency notice was mailed, as required by I. R. C. sec. 6013(b)(2)(C).

Court’s Reasoning

The court applied I. R. C. sec. 165(c)(3), which allows a deduction for losses arising from theft, and found that Jacobson’s testimony and the evidence supported a theft rather than a mere disappearance of her property. The court noted that Jacobson did not need to prove who the thief was, only that the loss was due to theft. For the joint return issue, the court interpreted I. R. C. sec. 6013(b)(2)(C) strictly, stating that a joint return cannot be elected after a deficiency notice has been mailed if the taxpayer files a petition with the Tax Court. The court rejected Jacobson’s attempt to apply I. R. C. sec. 7502, the timely mailing rule, because she failed to provide sufficient evidence that the amended return was mailed before the deficiency notice. The court emphasized the statutory requirement to take the law as written and the potential procedural complications of allowing such a change after a deficiency notice.

Practical Implications

This case clarifies that taxpayers must substantiate theft to claim a loss deduction and cannot rely solely on the mysterious disappearance of property. It also underscores the strict timing requirements for electing to file a joint return after a deficiency notice has been issued. Practitioners should advise clients to carefully document thefts and ensure timely filing of amended returns to avoid similar issues. The decision impacts how taxpayers and their advisors approach theft loss deductions and joint return elections, emphasizing the importance of timely and well-documented actions. Subsequent cases have cited Jacobson for its interpretation of the timely mailing rule and the requirements for substantiating theft losses.

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