Ballantine v. Commissioner, 74 T.C. 516 (1980)

Mailing a motion to the Tax Court within the prescribed time limit constitutes timely filing, even if service on opposing counsel is slightly delayed; furthermore, a taxpayer's demand for a second examination letter from the IRS is not a valid defense against a notice of deficiency when no second examination of taxpayer's books occurred.

Summary

In this Tax Court case, petitioners challenged a motion to strike filed by the Commissioner, arguing it was untimely and that the Commissioner erred by not issuing a second examination letter before issuing a notice of deficiency. The court held that the Commissioner's motion to strike was timely because it was mailed to the court within the 45-day limit, even though service on petitioners' counsel was slightly delayed due to an incorrect address. The court also ruled that the Commissioner was not required to issue a second examination letter under Section 7605(b) because no second examination of the petitioners' books actually took place. The court granted the Commissioner's motion to strike a portion of the petition and denied the petitioners' motion to dismiss.

Facts

The IRS served the petition on December 12, 1977. On January 26, 1978 (45 days later), the Commissioner mailed a motion to strike to the Tax Court. On the same day, a copy was mailed to petitioners' counsel at a former address and was returned as undeliverable. Upon return, the Commissioner immediately re-mailed the motion copy to the correct address of petitioners' counsel. Petitioners argued the motion to strike was untimely because service on their counsel was delayed. Petitioners also argued that the Commissioner erred by issuing a deficiency notice without issuing a second examination letter after petitioners refused to provide further access to their books without such a letter.

Procedural History

Petitioners filed a motion to dismiss the case or, alternatively, to dismiss the Commissioner's motion to strike, arguing the motion to strike was untimely under Tax Court Rules. The Commissioner had filed a motion to strike paragraph 4(e) of the petition, arguing it failed to state a claim upon which relief could be granted. The Tax Court consolidated these motions for hearing and ruling.

Issue(s)

1. Whether the Commissioner's motion to strike was timely filed with the Tax Court, considering a delay in serving petitioners' counsel.
2. Whether the Commissioner's failure to issue a second examination letter under Section 7605(b) before issuing a notice of deficiency constitutes a valid claim

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upon which relief can be granted, when no second examination occurred.

Holding

1. Yes, because timely mailing the motion to the Tax Court constitutes timely filing under Section 7502 and Tax Court Rules, and the minor delay in service on petitioners' counsel did not prejudice them or invalidate the timely filing.
2. No, because Section 7605(b) is intended to protect taxpayers from unnecessary examinations, and since no second examination occurred, the failure to issue a second examination letter does not invalidate the notice of deficiency or provide grounds for relief.

Court's Reasoning

The court reasoned that under Section 7502 and Tax Court Rules, timely mailing to the court is considered timely filing. The motion to strike was mailed to the Tax Court within the 45-day deadline. The delay in serving petitioners' counsel was inconsequential and did not prevent timely filing with the court. The court emphasized its discretion to allow pleadings out of time in the interest of justice, although it found the motion was indeed timely. Regarding the second issue, the court distinguished cases where a second examination had occurred without proper notice. Here, no second examination took place; petitioners merely requested a second examination letter before allowing further access to their books, which the court found was not required for the deficiency notice to be valid. The court cited precedent like *United States Holding Co. v. Commissioner* and *Rose v. Commissioner*, which held that refusing access and issuing a deficiency notice based on existing information without a second examination does not violate Section 7605(b).

Practical Implications

Ballantine v. Commissioner clarifies the procedural aspects of timely filing motions in Tax Court, emphasizing that mailing to the court is the key action for timeliness, not necessarily immediate service on opposing counsel. It also reinforces the IRS's ability to issue notices of deficiency based on available information without conducting a second examination if the taxpayer refuses to cooperate without a second examination letter. This case is important for understanding the limitations of taxpayer defenses based on Section 7605(b) when no actual second inspection of books has occurred. It highlights that Section 7605(b) is meant to prevent burdensome repeat examinations, not to impede the IRS from issuing deficiency notices based on existing records when taxpayers become uncooperative.

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