J. David Gladstone Foundation v. Commissioner, 77 T. C. 221 (1981)

A proposed revocation of nonprivate foundation status can trigger declaratory judgment jurisdiction under IRC § 7428 when the IRS fails to make a final determination within 270 days after the organization's written protest.

Summary

The J. David Gladstone Foundation sought declaratory judgment under IRC § 7428 after the IRS proposed to revoke its nonprivate foundation status but failed to issue a final determination within 900 days of the foundation's written protest. The Tax Court held it had jurisdiction to review the IRS's failure to make a determination, ruling that the foundation's protest constituted a request for determination, and its administrative remedies were exhausted due to the IRS's delay. This decision clarified that declaratory judgment is available not only when a final adverse determination is made but also when the IRS unduly delays final action on a proposed revocation.

Facts

The J. David Gladstone Foundation, established as a medical research organization, received an initial determination from the IRS in 1973 as a nonprivate foundation under IRC § 509(a)(1). In 1977, following an examination of the foundation's 1974 and 1975 returns, the IRS proposed to revoke this status. The foundation filed a written protest on September 2, 1977, and pursued its administrative appeals through the IRS's regional and national offices. Despite these efforts, the IRS did not issue a final determination until May 28, 1980, well over 900 days after the initial protest.

Procedural History

The foundation filed a petition for declaratory judgment with the Tax Court on March 3, 1980, citing the IRS's failure to make a determination on its nonprivate foundation status. The IRS moved to dismiss for lack of jurisdiction. After the petition was filed, the IRS issued a final adverse determination on May 28, 1980, leading to a second petition from the foundation based on this final determination. The Tax Court ultimately ruled on the first petition, finding it had jurisdiction over the case.

Issue(s)

1. Whether the Tax Court has jurisdiction under IRC § 7428(a)(2) to review a case where the IRS fails to make a final determination on a proposed revocation of nonprivate foundation status within 270 days of a written protest?
2. Whether the foundation's written protest constitutes a "request for determination" under IRC § 7428(b)(2)?
3. Whether the foundation exhausted its administrative remedies given the IRS's

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delay in making a final determination?

Holding

1. Yes, because the IRS's failure to act within 270 days after the foundation's protest constitutes a failure to make a determination, which triggers declaratory judgment jurisdiction under IRC § 7428(a)(2).
2. Yes, because the foundation's written protest of the proposed revocation is considered a request for determination within the meaning of IRC § 7428(b)(2).
3. Yes, because the foundation completed the protest and appeal process and took all reasonable steps to secure a determination, exhausting its administrative remedies due to the IRS's undue delay.

Court's Reasoning

The Tax Court reasoned that IRC § 7428 was enacted to provide relief in situations where the IRS either revokes or proposes to revoke an organization's status, as seen in *Bob Jones University v. Simon* and *Alexander v. "Americans United" Inc.* . The court interpreted the foundation's written protest as a request for determination, aligning with the legislative intent to allow declaratory judgment actions for both initial and continuing classification situations. The court also considered the IRS's delay of over 900 days as undue, especially given the legislative intent to prevent hardships caused by such delays. The majority opinion emphasized that the foundation had exhausted its administrative remedies, while dissenting opinions argued that a formal request for determination should be required before invoking jurisdiction.

Practical Implications

This decision has significant implications for tax-exempt organizations facing IRS revocation proceedings. It establishes that organizations can seek declaratory judgment not only after a final adverse determination but also when the IRS unduly delays its decision following a proposed revocation. This ruling encourages the IRS to act more promptly on proposed revocations, as delays could lead to court intervention. For legal practitioners, this case underscores the importance of timely filing of protests and appeals to trigger the 270-day period under IRC § 7428. It also affects how similar cases should be analyzed, emphasizing the need to consider whether the IRS's actions or inactions constitute a failure to make a determination. Subsequent cases, such as *B. H. W. Anesthesia Foundation, Inc. v. Commissioner* and *BBS Associates, Inc. v. Commissioner*, have applied this ruling, further solidifying its impact on tax-exempt organization law.

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