Pastore v. Commissioner, 78 T. C. 759 (1982)

The U. S. Tax Court retains jurisdiction to redetermine tax deficiencies and additions to tax for prebankruptcy years even after a taxpayer's bankruptcy discharge, if no immediate assessment was made under IRC § 6871(a).

Summary

In Pastore v. Commissioner, the Tax Court held it had jurisdiction to redetermine Roger Pastore's 1974 tax deficiency and fraud addition to tax, despite his bankruptcy discharge. Pastore filed for bankruptcy in 1976, where the IRS filed a proof of claim but did not assess the tax immediately under IRC § 6871(a). After discharge, the IRS issued a deficiency notice in 1981. The court reasoned that without an immediate assessment during bankruptcy, its jurisdiction remained intact post-discharge, distinguishing this case from others where assessments were made.

Facts

Roger J. Pastore and his wife filed their 1974 tax return timely. In February 1976, Pastore filed for voluntary bankruptcy and was adjudicated bankrupt. The IRS filed a proof of claim in August 1976 for the 1974 tax year, asserting an estimated tax liability and fraud addition. No immediate assessment was made under IRC § 6871(a), and the merits of the claim were not litigated during bankruptcy. Pastore was discharged in August 1977, and the bankruptcy estate was closed in October 1977. In April 1981, the IRS issued a notice of deficiency for 1974, leading Pastore to petition the Tax Court for redetermination.

Procedural History

Pastore filed a petition for redetermination in the Tax Court following the IRS's 1981 notice of deficiency. He then moved to dismiss for lack of jurisdiction, citing IRC § 6871(b). The IRS objected, arguing the court retained jurisdiction since no immediate assessment was made during the bankruptcy. The Tax Court denied Pastore's motion, asserting jurisdiction based on prior cases where no immediate assessment occurred.

Issue(s)

1. Whether the Tax Court lacks jurisdiction to redetermine a prebankruptcy year's tax deficiency and fraud addition to tax when the IRS filed a proof of claim in bankruptcy but made no immediate assessment under IRC § 6871(a).

Holding

1. No, because the Tax Court retains jurisdiction when no immediate assessment was made under IRC § 6871(a) during the bankruptcy proceeding, following the

holdings in Orenduff v. Commissioner and Graham v. Commissioner.

Court's Reasoning

The court reasoned that IRC § 6871(b) limits its jurisdiction only when an immediate assessment is made under IRC § 6871(a) during bankruptcy. In this case, no such assessment occurred. The court distinguished this from cases like Sharpe, Tatum, and Baron, where assessments were made or bankruptcy proceedings were ongoing. It relied on Orenduff and Graham, where no immediate assessments were made, and jurisdiction was upheld post-discharge. The court emphasized that the absence of an assessment under § 6871(a) meant that § 6871(b)'s jurisdictional bar did not apply, allowing the Tax Court to retain jurisdiction over the deficiency determination.

Practical Implications

This decision clarifies that the IRS's failure to make an immediate assessment under IRC § 6871(a) during bankruptcy preserves the Tax Court's jurisdiction to redetermine prebankruptcy tax deficiencies post-discharge. Practitioners should note that filing a proof of claim alone does not divest the Tax Court of jurisdiction if no assessment is made. This ruling impacts how tax liabilities are handled in bankruptcy, emphasizing the importance of timely assessments by the IRS to shift jurisdiction to bankruptcy courts. It also affects subsequent cases where the IRS may choose to issue deficiency notices after bankruptcy discharge, ensuring taxpayers can still challenge such deficiencies in the Tax Court.

