Ditunno v. Commissioner, 80 T. C. 362 (1983)

A full-time gambler can be considered as carrying on a trade or business, allowing gambling losses to be deducted in computing adjusted gross income and avoiding minimum tax treatment.

Summary

Anthony J. Ditunno, a full-time gambler, challenged the IRS's determination of tax deficiencies, arguing his gambling losses should be deductible in computing his adjusted gross income, thus avoiding the minimum tax. The Tax Court, reversing its prior decision in Gentile, held that Ditunno was engaged in the trade or business of gambling based on the facts-and-circumstances test from Higgins v. Commissioner. This allowed his losses to be deducted before calculating adjusted gross income, meaning they were not subject to the minimum tax. The decision overruled the requirement from Gentile that a trade or business must involve holding oneself out to others, focusing instead on the regularity and extent of Ditunno's gambling activities.

Facts

Anthony J. Ditunno was a full-time gambler with no other employment. He gambled exclusively on horse races at the Waterford Race Track in Newell, West Virginia, six days a week, year-round. Ditunno studied racing forms before placing bets primarily on doubles and trifecta races. His gambling winnings were approximately $60,000 annually, and he deducted nearly equal losses on Schedule C. His only other income was interest of $102. 59 in 1979.

Procedural History

The IRS determined tax deficiencies for Ditunno for the years 1977, 1978, and 1979, asserting his gambling losses were itemized deductions subject to the minimum tax. Ditunno contested this, arguing his losses were trade or business deductions. The case went before the United States Tax Court, which had previously ruled in Gentile that gambling was not a trade or business unless the gambler offered goods or services to others. The Tax Court, in this case, reconsidered and overruled Gentile, applying the facts-and-circumstances test from Higgins v. Commissioner to find Ditunno was engaged in the trade or business of gambling.

Issue(s)

1. Whether Ditunno's full-time gambling constituted a trade or business under section 62(1) of the Internal Revenue Code, allowing his gambling losses to be deducted from gross income in computing adjusted gross income.
2. Whether Ditunno's gambling losses were items of tax preference subject to the minimum tax under sections 56 and 55 of the Internal Revenue Code.

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Holding

1. Yes, because Ditunno's full-time, regular, and continuous gambling activities satisfied the facts-and-circumstances test for carrying on a trade or business.
2. No, because as trade or business deductions, Ditunno's gambling losses were not items of tax preference subject to the minimum tax.

Court's Reasoning

The Tax Court applied the facts-and-circumstances test from Higgins v. Commissioner, examining Ditunno's consistent and full-time gambling activities to determine he was engaged in a trade or business. The court overruled Gentile, which had required a trade or business to involve holding oneself out to others as selling goods or services, finding this test overly restrictive. The court emphasized that Ditunno's gambling was not passive investment but an active, daily endeavor, similar to a business. The majority opinion noted that lower courts had applied the Higgins test without requiring the provision of goods or services. The dissenting opinion, led by Chief Judge Tannenwald, argued that the majority's decision would wreak havoc on the trade or business concept and that Gentile should not have been overruled, as it aligned with established case law requiring a holding-out to others.

Practical Implications

This decision expanded the definition of what constitutes a trade or business, allowing full-time gamblers to potentially deduct their losses before calculating adjusted gross income, thus avoiding the minimum tax. Legal practitioners must now consider the regularity and extent of a client's gambling activities when assessing whether they constitute a trade or business. This ruling may encourage more gamblers to claim trade or business status, potentially increasing litigation in this area. Businesses involved in gambling or gaming must be aware of this precedent when advising clients on tax implications. Subsequent cases, such as Mayo v. Commissioner, have followed Ditunno in applying the facts-and-circumstances test to gambling activities. The decision also highlighted the ongoing tension between majority and dissenting opinions on what constitutes a trade or business, which may lead to further clarification by higher courts or legislative action.

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