Piarulle v. Commissioner, 80 T. C. 1043 (1983)

An altered Form 872 consent to extend the period for tax assessment without taxpayer's consent is invalid.

Summary

In Piarulle v. Commissioner, the court held that a Form 872 consent to extend the period for tax assessment, which was altered by the IRS after the taxpayers signed it, was invalid. The taxpayers had agreed to extend the assessment period for tax years 1974, 1975, and 1977, but the IRS removed the 1977 year from the consent without notifying the taxpayers or their representative. The court ruled that the altered form did not constitute a valid agreement under IRC § 6501(c)(4) and rejected the IRS's estoppel argument, finding no reasonable reliance by the IRS on the altered form.

Facts

The Piarulles filed joint federal income tax returns for 1974-1977. The IRS began examining their 1974 return in 1975, focusing on deductions from Dr. Piarulle's transactions with Oaklawn Farms, Inc. The 1975 return was similarly examined. The Piarulles executed multiple Form 872 consents to extend the assessment period for these years. In November 1980, they signed a Form 872 extending the period for 1974, 1975, and 1977 to June 30, 1981, limited to Oaklawn issues. After signing, an IRS agent altered the form by removing 1977 without the Piarulles' knowledge or consent. The IRS issued a deficiency notice on March 27, 1981, after the extended period expired.

Procedural History

The IRS issued a statutory notice of deficiency on March 27, 1981, for the tax years 1974-1977. The Piarulles filed a petition with the Tax Court, which granted a separate trial for the statute of limitations issues related to 1974 and 1975. The Tax Court ultimately held that the altered Form 872 was invalid and that the Piarulles were not estopped from asserting its invalidity.

Issue(s)

1. Whether the IRS's alteration of a multiyear Form 872 consent, removing one taxable year after the taxpayers signed it, rendered the consent invalid as to the remaining years.
2. Whether the taxpayers are estopped from asserting the invalidity of the altered consent.

Holding

1. Yes, because the altered Form 872 did not constitute a valid written agreement

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under IRC § 6501(c)(4), as there was no manifestation of mutual assent between the parties.
2. No, because the IRS could not reasonably rely on the altered form and the taxpayers' silence did not constitute wrongful misleading conduct.

Court's Reasoning

The court emphasized that a Form 872 is a unilateral waiver of a defense by the taxpayer, but it must be a written agreement under IRC § 6501(c)(4). The IRS's alteration of the form after the taxpayers signed it, without their knowledge or consent, resulted in a different document than what the taxpayers agreed to. The court distinguished this case from others where a single form covered multiple years but was not altered post-execution. The court also rejected the IRS's estoppel argument, finding that the IRS could not reasonably rely on its own agent's alteration and that the taxpayers' silence was not misleading given the circumstances. The court cited Cary v. Commissioner, where a similar alteration of a Form 872 was held invalid.

Practical Implications

This decision underscores the importance of ensuring that any alterations to tax consent forms are agreed to by both parties. Taxpayers and their representatives should carefully review and negotiate the terms of any extension agreements. The IRS must obtain new consents if changes are needed, rather than altering executed forms. Practitioners should advise clients to promptly notify the IRS of any objections to proposed alterations. This case may encourage the IRS to be more diligent in timely issuing deficiency notices when extensions are expiring. Subsequent cases have cited Piarulle for the principle that post-execution alterations to Form 872 invalidate the agreement.

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