Kenneth L. Phillips v. Commissioner of Internal Revenue, 86 T. C. 433 (1986)

A taxpayer can file a joint return for the first time, even if it is late and after receiving a notice of deficiency, if no prior return was filed for the same taxable year.

Summary

Kenneth Phillips, a U. S. citizen living in Scotland, did not timely file his federal income tax returns for 1979-1981. The IRS created "dummy returns" for him, which were essentially blank forms, and issued notices of deficiency. Phillips later filed joint returns with his nonresident alien wife, electing to treat her as a U. S. resident. The Tax Court held that the IRS's dummy returns were not "returns" under the law, Phillips validly elected to treat his wife as a U. S. resident, and because no prior returns were filed, he could file joint returns despite the late filing and notices of deficiency. This ruling overruled prior case law and clarified that the restrictions on changing filing status after a separate return do not apply when no return has been previously filed.

Facts

Kenneth Phillips, a U. S. citizen residing in Scotland, did not timely file his federal income tax returns for the years 1979, 1980, and 1981. The IRS prepared "dummy returns" for these years, which consisted of blank Form 1040s showing only Phillips's name, address, and social security number. These dummy returns were processed in December 1982, and no tax was assessed. In May 1983, the IRS issued statutory notices of deficiency to Phillips for each year. In October 1983, Phillips filed federal income tax returns for these years, claiming joint filing status with his nonresident alien wife, Sarah Phillips, and electing to treat her as a U. S. resident under section 6013(g).

Procedural History

The IRS issued notices of deficiency to Phillips in May 1983 for the years 1979, 1980, and 1981. Phillips timely filed a petition with the U. S. Tax Court in October 1983, and on the same date, he filed federal income tax returns for these years, claiming joint filing status with his wife. The Tax Court considered whether Phillips could file joint returns given the late filing and the notices of deficiency.

Issue(s)

1. Whether the IRS's dummy returns constituted "returns" for purposes of section 6013.
2. Whether Phillips and his wife validly elected to treat her as a U. S. resident under section 6013(g).
3. Whether Phillips could file joint returns for the years in question despite the late

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filing and the issuance of notices of deficiency.

Holding

1. No, because the dummy returns were not "returns" under section 6020(b) as they were merely blank forms used to facilitate IRS processing procedures.
2. Yes, because Phillips and his wife substantially complied with the requirements of the regulations and satisfied section 6013(g).
3. Yes, because no prior returns were filed, and section 6013(b) applies only when a taxpayer seeks to change filing status after having previously filed a return.

Court's Reasoning

The Tax Court reasoned that the IRS's dummy returns, being blank forms, did not constitute "returns" under section 6020(b). The court emphasized that a valid return must provide sufficient information to calculate tax liability, which the dummy returns did not. Regarding the election under section 6013(g), the court found that Phillips and his wife substantially complied with the regulations by attaching a statement to their joint returns and signing them, thereby satisfying the statutory requirements. On the issue of joint filing, the court overruled its prior decision in *Durovic v. Commissioner*, holding that section 6013(b) restrictions apply only when a taxpayer has previously filed a separate return. The court noted that the IRS's own revenue rulings supported this interpretation and that the legislative history of section 6013 did not suggest otherwise. The court also considered the Commissioner's failure to apply the *Durovic* holding in practice as a factor in overruling it.

Practical Implications

This decision has significant implications for taxpayers and practitioners. It clarifies that a taxpayer can file a joint return for the first time, even if it is late and after receiving a notice of deficiency, as long as no prior return was filed for the same taxable year. This ruling overrules prior case law and aligns with the IRS's own revenue rulings. Practitioners should advise clients that if they have not filed any return for a given year, they can still file a joint return, even if it is late, without being barred by the restrictions in section 6013(b). This decision also highlights the importance of carefully reviewing IRS-prepared returns and understanding the difference between a "dummy return" and a valid return. Subsequent cases, such as *Tucker v. United States*, have applied this ruling to similar situations, further solidifying its impact on tax practice.

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