Tomburello v. Commissioner, 84 T. C. 972 (1985)

Tokes received by casino dealers are taxable income, not gifts, and an employer is not considered a third-party recordkeeper for IRS summons purposes.

Summary

In Tomburello v. Commissioner, the Tax Court ruled that casino tokes (tips) received by a card dealer are taxable income, not gifts, and upheld the IRS's determination of a tax deficiency based on unreported toke income. The court also clarified that an employer is not a third-party recordkeeper for IRS summons purposes, thus no notice is required to the employee when the IRS summons the employer's records. This decision reinforces the taxability of income from tips and establishes important procedural rules for IRS investigations.

Facts

Louis R. Tomburello, a card dealer at the MGM-Grand-Reno Hotel and Casino, received tokes (tips in the form of casino chips) during his employment in 1980. These tokes were pooled and distributed among dealers on each shift. Tomburello did not report these tokes on his 1980 federal income tax return. The IRS, after serving a summons on MGM for payroll records, determined a tax deficiency and added a negligence penalty for unreported toke income.

Procedural History

The IRS issued a notice of deficiency to Tomburello for unreported income from tokes and a negligence penalty. Tomburello petitioned the Tax Court, arguing that tokes were non-taxable gifts and challenging the IRS's summons procedure. The Tax Court upheld the IRS's determination, finding tokes taxable and the summons procedure valid.

Issue(s)

1. Whether tokes received by a casino dealer constitute taxable income or non-taxable gifts.
2. Whether an employer is a third-party recordkeeper under section 7609, requiring notice to the employee when the IRS summons the employer's records.

Holding

1. Yes, because tokes are compensation for services rendered and not gifts under section 102.
2. No, because an employer does not qualify as a third-party recordkeeper under section 7609, and thus no notice is required to the employee when the IRS summons the employer's records.

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Court’s Reasoning

The court applied established legal principles to determine that tokes are taxable income, referencing Olk v. United States and Catalano v. Commissioner. The court rejected Tomburello’s arguments that tokes were gifts and not taxable, citing the lack of a direct relationship between the service performed and the tokes received. The court also analyzed the statutory language of section 7609 and its legislative history, concluding that an employer is not a third-party recordkeeper as defined in the statute. The court supported its decision with citations to Ninth Circuit cases and other federal courts that have similarly interpreted section 7609. The court emphasized that the IRS’s summons of an employer’s own business records does not trigger the special procedural rules of section 7609, thus no notice to the employee is required.

Practical Implications

This decision clarifies that tips or tokes received by service industry employees, including casino dealers, are taxable income and must be reported. It reinforces the importance of accurate record-keeping and reporting of all income sources. For legal practitioners, this case provides guidance on challenging IRS determinations of unreported income and understanding the scope of section 7609 regarding third-party summonses. Businesses in the service industry should ensure compliance with tax reporting requirements for tips. Subsequent cases have relied on this ruling to affirm the taxability of tips and the procedural aspects of IRS summonses.

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