Wasie v. Commissioner, 86 T. C. 962 (1986)

The reasonableness of the IRS's position in litigation is determined from the time of filing the petition, not pre-litigation conduct.

Summary

Marie Wasie, a foundation manager, challenged the IRS's imposition of excise taxes under IRC section 4941 for her involvement in a self-dealing transaction. The IRS issued a statutory notice to Wasie but not to the self-dealer, Murphy Motor Freight Lines, Inc. , due to impending legislation that would retroactively relieve both parties from tax liability. Wasie sought litigation costs under IRC section 7430, arguing the IRS's actions were unreasonable. The Tax Court ruled that only post-petition conduct is considered in determining the reasonableness of the IRS's position and found that the IRS acted reasonably, denying Wasie's request for costs and fees.

Facts

In 1980, the Wasie Foundation sold shares to Murphy Motor Freight Lines, Inc. , which was considered a self-dealer due to a prior donation. The transaction involved payment in cash and debentures at below-market interest rates. The IRS issued a statutory notice to Wasie for excise taxes under IRC section 4941, but not to Murphy, due to pending legislation (Deficit Reduction Act of 1984) that would retroactively eliminate the tax liability. Wasie refused to extend the statute of limitations, prompting the IRS to issue the notice. After the legislation was enacted, the IRS conceded the tax issues, and Wasie sought litigation costs and fees.

Procedural History

The IRS issued a statutory notice to Wasie on May 9, 1984. The Deficit Reduction Act of 1984 was enacted on July 18, 1984, retroactively nullifying the tax liability. Wasie filed a petition with the Tax Court on August 6, 1984. The IRS conceded the tax issues in its answer on October 17, 1984. The case was scheduled for trial on September 9, 1985, but was resolved by a stipulation of settled issues, leaving only Wasie's motion for costs and fees under IRC section 7430 for the court's consideration.

Issue(s)

1. Whether the IRS's position in the civil proceeding was unreasonable?
2. Whether pre-litigation conduct of the IRS should be considered in determining reasonableness, and if so, whether pre- and/or post-litigation costs should be awarded?

Holding

1. No, because the IRS's position in the litigation was reasonable given the circumstances, including the retroactive legislation and the IRS's actions post-petition.
2. No, because the reasonableness of the IRS's position is determined from the time of filing the petition, not pre-litigation conduct, and thus only post-petition costs are considered under IRC section 7430.

Court's Reasoning

The court reasoned that the IRS's position in the litigation was reasonable, considering the retroactive legislation that nullified the tax liability and the IRS's post-petition actions. The court relied on *Baker v. Commissioner*, which held that the reasonableness of the IRS's position under IRC section 7430 is measured from the time of filing the petition. The court rejected Wasie's argument that the IRS lacked statutory authority to issue a notice to a foundation manager without first issuing one to the self-dealer, interpreting the term "imposed" in IRC section 4941 as not requiring a prior determination against the self-dealer. The court also noted that Wasie's refusal to extend the statute of limitations prompted the IRS's actions, and the IRS's concession of the tax issues post-legislation was reasonable. The court emphasized that the IRS's position in the litigation was defensive and not unreasonable, especially given Wasie's attempts to force action against Murphy.

Practical Implications

This decision clarifies that the reasonableness of the IRS's position under IRC section 7430 is assessed from the filing of the petition, not pre-litigation conduct. Practitioners should focus on the IRS's actions and positions taken after the petition is filed when seeking litigation costs. The decision also reinforces that the IRS can issue a statutory notice to a foundation manager without first issuing one to a self-dealer, as long as the tax is congressionally imposed. This ruling may affect how taxpayers and their attorneys approach litigation against the IRS, particularly in cases involving retroactive legislation and the timing of statutory notices. Later cases have continued to apply this principle, emphasizing the importance of post-petition conduct in determining the reasonableness of the IRS's position.

