Southern v. Commissioner, 87 T. C. 49 (1986)

A waiver of the statute of limitations in partnership tax cases extends to adjustments of a partner's distributive share of partnership credits, including investment tax credit recapture.

Summary

In Southern v. Commissioner, the Tax Court addressed whether a waiver of the statute of limitations for tax assessments included adjustments related to investment tax credit recapture under section 47. The taxpayers argued that the waiver did not cover such adjustments, but the court disagreed, ruling that the waiver's language, which mirrored section 702(a)(7), encompassed adjustments to partnership credits, including recapture. The court granted partial summary judgment to the Commissioner, affirming that the notice of deficiency was timely issued within the extended statute of limitations.

Facts

Charles Baxter Southern and Dorothy I. Southern filed a joint Federal income tax return for 1978. They were partners in Memphis Barge Co. , which had claimed an investment tax credit under section 38. The IRS issued a notice of deficiency in 1984, increasing their tax due to investment credit recapture under section 47. The Southerns had executed a Form 872-A in 1982, waiving the statute of limitations for assessments related to their distributive share of partnership items, including credits. The IRS argued this waiver included the recapture adjustment.

Procedural History

The Southerns filed a petition with the Tax Court challenging the deficiency notice, initially on substantive grounds and later asserting the notice was untimely due to the statute of limitations. The IRS moved for partial summary judgment, claiming the waiver covered the recapture adjustment. The Tax Court considered the motions and granted partial summary judgment to the IRS.

Issue(s)

1. Whether the language of the waiver of the statute of limitations, based on section 702(a)(7), encompasses an increase in tax under section 47 for investment credit recapture.
2. Whether an "adjustment" to a partner's distributive share of partnership credits includes a recomputation under section 47.

Holding

1. Yes, because the language of the waiver and section 702(a)(7) encompasses the investment credit authorized by section 38.

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2. Yes, because an “adjustment” to a credit includes a recomputation under section 47, as it is a decrease in the credit.

Court’s Reasoning

The Tax Court reasoned that the waiver’s language, mirroring section 702(a)(7), included adjustments to partnership credits. The court noted that the investment credit under section 38 is a distributable partnership item, and the waiver’s inclusion of the term “adjustment” covered the recapture under section 47. The court rejected the Southerns’ argument that the investment credit was not a partnership item, emphasizing that the partnership’s status as a non-taxable entity under section 701 meant that credits must be separately stated and accounted for by partners. The court also found no genuine issue of material fact regarding the waiver’s efficacy, as both parties were aware of the recapture issue at the administrative level.

Practical Implications

This decision clarifies that waivers of the statute of limitations in partnership tax cases can encompass adjustments to partnership credits, including investment credit recapture. Practitioners should carefully review the language of such waivers to ensure they understand the scope of potential adjustments. The ruling reinforces the principle that partnership items, even if not specifically enumerated in regulations, may be subject to adjustments affecting partners’ tax liabilities. Subsequent cases have followed this precedent, emphasizing the importance of clear waiver language in partnership tax matters.

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