Frisch v. Commissioner, 87 T. C. 838 (1986)

Pro se attorneys cannot recover compensation for their own time spent on their cases under section 7430 of the Internal Revenue Code.

Summary

In Frisch v. Commissioner, the Tax Court addressed whether a pro se attorney could recover litigation costs for his own time spent on his case and whether the government's position was unreasonable. The case involved a dispute over the valuation of a donated Norman Rockwell print. The court found the government's position unreasonable due to reliance on a flawed appraisal and inflexibility in settlement negotiations. However, it ruled that the attorney, Frisch, could not be awarded fees for his own time under section 7430, which requires that fees be "paid or incurred" for attorney services. Frisch was awarded $1,860 for expert witness fees and court costs but denied compensation for his own legal services.

Facts

Roger and Marie Frisch donated a Norman Rockwell print to Bates College in 1979, claiming a $6,000 charitable deduction. The IRS challenged this valuation, asserting it was worth only $500. The Frisches prevailed in Tax Court, which found the IRS's position unreasonable due to reliance on a discredited appraisal and failure to engage in meaningful settlement discussions. Roger Frisch, an attorney, sought litigation costs including $6,000 for his own time spent on the case.

Procedural History

The Frisches filed a petition in the U. S. Tax Court challenging the IRS's determination of their tax liability. After a trial, the court found in their favor on February 26, 1986. The Frisches then moved for litigation costs, prompting the court to vacate its decision to consider this motion. The court ultimately decided the motion without a hearing and issued its opinion on the award of costs.

Issue(s)

1. Whether the position of the United States in the civil proceeding was unreasonable.
2. Whether a pro se attorney-petitioner may be compensated for the value of services rendered in his own behalf.
3. What amount of litigation costs should be awarded.

Holding

1. Yes, because the IRS relied on a flawed appraisal and failed to engage in meaningful settlement discussions.
2. No, because section 7430 requires fees to be "paid or incurred" and a pro se

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attorney does not incur fees for representing himself.
3. The court awarded $1,860 for expert witness fees and court costs but denied the $6,000 claim for the attorney's own time.

Court's Reasoning

The court found the IRS's position unreasonable due to its reliance on a discredited appraisal that omitted higher-priced comparables and its failure to re-evaluate its position despite new facts. The court also criticized the IRS for seeking burdensome interrogatories and rejecting settlement offers. On the issue of pro se attorney fees, the court focused on the plain language of section 7430, which requires fees to be "paid or incurred. " The court, adopting Judge Roney's dissent in Duncan v. Poythress, reasoned that an attorney acts as an agent for another, and without another party, there can be no attorney, only a pro se litigant. Frisch did not pay or incur fees for his own services, so he could not recover for them. The court distinguished this case from others under different statutes that allow pro se attorneys to recover fees.

Practical Implications

This decision clarifies that pro se attorneys cannot recover compensation for their own time under section 7430, impacting how attorneys approach tax litigation when representing themselves. It reinforces the need for the IRS to thoroughly evaluate its positions and engage in settlement discussions to avoid being deemed unreasonable. Practitioners should be aware that while expert witness fees and court costs are recoverable, self-representation does not entitle attorneys to compensation for their own time. This ruling may influence future interpretations of similar statutes in other areas of law and encourages attorneys to consider hiring separate counsel to ensure potential fee recovery.

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