Roszkos v. Commissioner, 87 T. C. 1255 (1986)

An open-ended consent to extend the tax assessment period terminates when the IRS mails a notice of deficiency, even if sent to the wrong address, provided the taxpayer later becomes aware of it.

Summary

The Roszkos executed Form 872-A consents extending the IRS's time to assess their 1973 and 1974 taxes. The IRS mailed notices of deficiency to incorrect addresses, assessed and collected the tax, then refunded it after the Roszkos successfully moved to dismiss due to the incorrect addresses. The IRS issued a new notice, which the Roszkos challenged as untimely. The Tax Court held that the original notices, despite being defective under section 6212(b), terminated the consents once the Roszkos learned of them during collection, thus expiring the assessment period before the new notice was issued.

Facts

The Roszkos executed Form 872-A consents for their 1973 and 1974 tax years, allowing the IRS an open-ended period to assess taxes. In December 1981, the IRS mailed notices of deficiency to the Roszkos' former addresses, which were not their last known address. The Roszkos did not receive these notices. The IRS assessed and collected the deficiencies in May 1982. The Roszkos paid the assessed amounts in late 1982 and early 1983. In June 1984, they petitioned the Tax Court and moved for dismissal, which was granted due to the notices not being sent to their last known address. The IRS refunded the payments in November 1985 and issued a new notice of deficiency in October 1985, which the Roszkos challenged as untimely.

Procedural History

The Roszkos initially petitioned the Tax Court in June 1984 after paying the assessed taxes, moving to dismiss for lack of jurisdiction due to the notices of deficiency being mailed to incorrect addresses. The Tax Court dismissed the case in November 1984. After the IRS refunded the payments and issued a new notice of deficiency in October 1985, the Roszkos again petitioned the Tax Court, moving for dismissal on the grounds that the new notice was untimely because the statute of limitations had expired.

Issue(s)

1. Whether a notice of deficiency mailed to an incorrect address terminates an open-ended consent (Form 872-A) to extend the assessment period if the taxpayer later becomes aware of it.
2. Whether the IRS can invoke the jurisdiction of the Tax Court under the holding in Wallin v. Commissioner when it has not exercised reasonable diligence in determining a taxpayer's last known address.

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Holding

1. Yes, because the mailing of the notice of deficiency, despite being defective under section 6212(b), combined with the Roszkos' subsequent knowledge of it, effectively terminated the Form 872-A consent.
2. No, because the equitable relief provided in Wallin v. Commissioner is not available to the IRS when its lack of diligence in ascertaining the taxpayer's correct address is the basis for such relief.

Court's Reasoning

The court interpreted the Form 872-A consent as being terminated by the IRS's mailing of a notice of deficiency, regardless of its compliance with section 6212(b), if the taxpayer later became aware of it. The court emphasized that the IRS designed the consent form for its administrative convenience and did not include a requirement for the taxpayer to receive the notice. The court rejected the IRS's argument that a defective notice is a "nullity," citing cases like Clodfelter v. Commissioner, where a defect in notice is cured by the taxpayer's actual knowledge. The court also distinguished Commissioner v. DeLeve, where a notice was a nullity due to intervening bankruptcy provisions, not applicable here. The court declined to extend the equitable relief from Wallin v. Commissioner to the IRS, as it was meant for taxpayers facing IRS negligence, not to benefit the IRS's lack of diligence.

Practical Implications

This decision clarifies that open-ended consents to extend tax assessment periods can be terminated by the IRS mailing a notice of deficiency, even if to the wrong address, provided the taxpayer later learns of it. Taxpayers should be aware that such notices can end the consent period, triggering the statute of limitations, even if not initially received. Practitioners should advise clients to monitor any IRS collection actions that might indicate a notice was issued, as this could start the statute of limitations. The IRS must exercise diligence in sending notices to the correct address to avoid losing the right to assess taxes. This case may lead to changes in IRS procedures regarding the use of Form 872-A to ensure notices are sent to the correct address. Subsequent cases like Grunwald v. Commissioner have addressed related issues of terminating consents, but none have directly overturned or distinguished this ruling.

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