Magazine v. Commissioner, 93 T. C. 135 (1989)

The IRS must provide direct evidence of mailing a notice of deficiency to establish jurisdiction, and cannot rely solely on habit evidence to prove mailing.

Summary

In Magazine v. Commissioner, the taxpayer challenged the IRS's notice of deficiency, arguing it was not properly mailed or sent to her last known address. The IRS could not produce Form 3877, the postal certification of mailing, as it had been destroyed. The court held that the IRS's habit evidence regarding mailing procedures was insufficient to prove the notice was mailed without direct evidence. This case underscores the importance of direct proof of mailing for establishing tax court jurisdiction and the limitations of habit evidence in such contexts.

Facts

Mary O. Banks (later Magazine) received a notice of deficiency dated March 29, 1983, addressed to an address in St. Louis where she never resided. She filed her petition on October 2, 1986, well beyond the 90-day statutory period. The IRS could not produce Form 3877 to prove mailing because it had been destroyed. The IRS relied on the habit evidence of Laura Nothstein, the 90-day clerk responsible for mailing notices, who followed a routine practice for mailing notices but had no specific recollection of mailing Magazine's notice.

Procedural History

The IRS moved to dismiss the case for lack of jurisdiction due to the untimely filing of the petition. Magazine contested the motion, arguing the notice was not mailed or was not sent to her last known address. The Tax Court considered whether the IRS could prove mailing using habit evidence in the absence of Form 3877.

Issue(s)

1. Whether the IRS can prove the mailing of a notice of deficiency required under section 6212 by using habit evidence of its mailing procedures when direct evidence of mailing is unavailable.

Holding

1. No, because the IRS must provide direct evidence of mailing to establish jurisdiction, and habit evidence alone is insufficient to prove that the notice was mailed.

Court's Reasoning

The court emphasized that the date of mailing a notice of deficiency is critical for

© 2025 SCOTUSreports.com. All rights reserved.

determining jurisdiction under section 6213, which requires a petition to be filed within 90 or 150 days from the date of mailing. The IRS typically uses Form 3877 as direct evidence of mailing, but in this case, it was destroyed. The court reviewed the admissibility of habit evidence under Federal Rule of Evidence 406 but found it insufficient to prove mailing without direct evidence. The court noted that habit evidence can be probative in some contexts but does not prove that a specific action occurred on a particular occasion. The court criticized the IRS's practice of destroying Form 3877, highlighting the importance of this document for proving jurisdiction in tax cases.

Practical Implications

This decision requires the IRS to retain direct evidence of mailing notices of deficiency, such as Form 3877, to establish jurisdiction in tax court cases. It limits the use of habit evidence for proving mailing, emphasizing the need for concrete proof. Practitioners should advise clients to challenge jurisdiction if the IRS cannot produce direct evidence of mailing. This ruling may lead the IRS to revise its record-keeping practices to ensure the availability of such evidence. Subsequent cases have followed this precedent, reinforcing the requirement for direct proof of mailing in tax deficiency disputes.

© 2025 SCOTUSreports.com. All rights reserved.