Weiss v. Commissioner, 89 T. C. 779, 1987 U. S. Tax Ct. LEXIS 143, 89 T. C. No. 54 (U. S. Tax Court, Oct. 8, 1987), reversed and remanded, June 27, 1988

Litigation costs are not recoverable under IRC section 7430 when the IRS's position after the filing of a petition is substantially justified, despite an initial lack of jurisdiction due to non-compliance with partnership audit procedures.

Summary

In Weiss v. Commissioner, the U. S. Tax Court denied the petitioners' motion for litigation costs despite dismissing the case for lack of jurisdiction. The IRS had issued a notice of deficiency without conducting a required partnership-level audit. The court held that the IRS's position was substantially justified after the petition was filed, as they promptly conceded the jurisdictional issue upon receiving the administrative file. This decision clarifies that the IRS's position in the civil proceeding, not the initial notice of deficiency, determines eligibility for litigation costs under IRC section 7430.

Facts

Herbert Weiss and the Estate of Roberta Weiss were partners in Transpac Drilling Venture 1982-14, a partnership formed after September 3, 1982, subject to the partnership audit and litigation procedures under IRC section 6221 et seq. The IRS issued a notice of deficiency without conducting a partnership-level audit. The petitioners filed a timely petition with the Tax Court, alleging lack of jurisdiction due to non-compliance with these procedures. After receiving the administrative file, the IRS conceded the jurisdictional issue and moved to dismiss the case, which the court granted. The petitioners then sought litigation costs, arguing the IRS's position was not substantially justified.

Procedural History

The petitioners filed a petition on July 7, 1986, alleging lack of jurisdiction. The IRS moved to extend time to answer, which was granted. After receiving the administrative file, the IRS moved to dismiss for lack of jurisdiction on November 3, 1986, which was granted on November 14, 1986. The petitioners filed a motion for litigation costs on January 9, 1987. The Tax Court initially held it had jurisdiction to consider the motion but reserved judgment on the award until the IRS responded. On October 8, 1987, the court denied the motion for litigation costs. This decision was reversed and remanded on June 27, 1988.

Issue(s)

1. Whether the IRS's position was substantially justified under IRC section 7430(c)(4)(A) after the petition was filed.
2. Whether there was administrative inaction by the District Counsel that gave rise

to the position of the United States expressed in the notice of deficiency under IRC section 7430(c)(4)(B).

Holding

1. Yes, because the IRS's position after the petition was filed was substantially justified as they promptly conceded the jurisdictional issue upon receiving the administrative file.
2. No, because there was no administrative inaction by the District Counsel that led to the issuance of the notice of deficiency.

Court's Reasoning

The court applied IRC section 7430, which allows for the recovery of litigation costs if the IRS's position was not substantially justified. It clarified that the relevant position is that taken by the IRS after the petition is filed, not the initial notice of deficiency. The court cited Sher v. Commissioner (89 T. C. 79 (1987)) to support this interpretation. The court noted that the IRS's position after the petition was filed was substantially justified because they promptly conceded the case upon receiving the administrative file, distinguishing this case from Stieha v. Commissioner (89 T. C. 784 (1987)), where the IRS's lack of diligence was not justified. The court also rejected the petitioners' argument that the District Counsel's failure to review the notice of deficiency constituted administrative inaction under IRC section 7430(c)(4)(B), stating that such involvement was not required and the court would not second-guess the IRS's administrative actions.

Practical Implications

This decision emphasizes that the IRS's position in the civil proceeding, not the initial notice of deficiency, determines eligibility for litigation costs under IRC section 7430. Practitioners should focus on the IRS's actions after the petition is filed when assessing potential cost recovery. The decision also underscores the importance of the IRS promptly conceding cases when justified, as this can impact cost recovery. Subsequent cases have followed this reasoning, reinforcing the principle that the IRS's position must be evaluated post-petition. This case may encourage taxpayers to carefully consider the timing and basis for seeking litigation costs, ensuring they address the IRS's actions after the petition is filed.