Freesen v. Commissioner, 89 T. C. 1123 (1987)

The Tax Court cannot award the cost of bond premiums against the United States unless such costs are explicitly authorized by statute.

Summary

In Freesen v. Commissioner, the petitioners sought to recover bond premium costs incurred to stay tax assessment and collection during their appeal. The Tax Court denied the motion, ruling that bond premiums are not recoverable against the United States under 28 U. S. C. § 2412 and § 1920, which specifically enumerate allowable costs. The decision emphasizes the principle of sovereign immunity, requiring explicit statutory authorization for cost awards against the government, and clarifies that bond premiums are not included in the statutory list of recoverable costs.

Facts

The petitioners, shareholders of Freesen Equipment Co. , appealed a Tax Court decision disallowing their investment tax credit and treating their depreciation as a tax-preference item. After a successful appeal to the Seventh Circuit, they sought to recover costs, including premiums paid for bonds required under 26 U. S. C. § 7485 to stay assessment and collection of taxes during the appeal. These bond premiums totaled $10,233 across multiple petitioners.

Procedural History

The Tax Court initially sustained the Commissioner's disallowance of the petitioners' claimed investment tax credit and upheld the determination regarding depreciation. The petitioners appealed to the Seventh Circuit, which reversed the Tax Court's decision. Following the reversal, the petitioners moved in the Tax Court to recover costs, including bond premiums, under Rule 39 of the Federal Rules of Appellate Procedure.

Issue(s)

1. Whether the Tax Court has the authority to award the cost of premiums paid for bonds under 26 U. S. C. § 7485 against the United States.
2. Whether such costs are authorized by law to be awarded against the United States under 28 U. S. C. § 2412 and § 1920.

Holding

1. No, because the Tax Court's authority to award costs against the United States is limited by the principle of sovereign immunity, which requires explicit statutory authorization.
2. No, because the cost of bond premiums is not enumerated in 28 U. S. C. § 1920,

and 28 U. S. C. § 2412 limits cost awards against the United States to those enumerated costs.

Court’s Reasoning

The court applied the principle of sovereign immunity, stating that the United States is exempt from cost awards unless specifically authorized by Congress. The court referenced 28 U. S. C. § 2412(a), which authorizes cost awards against the United States only as enumerated in 28 U. S. C. § 1920. The court found that bond premiums are not listed among the six categories of costs in § 1920 and declined to add a new category. The court also distinguished cases where costs were awarded against the United States, noting those costs fell within the enumerated categories of § 1920. The court concluded that without explicit statutory authority, it could not award the bond premium costs against the United States.

Practical Implications

This decision limits the ability of taxpayers to recover bond premium costs incurred during tax appeals against the United States. Practitioners should advise clients that such costs are not recoverable unless explicitly provided for by statute. This ruling reinforces the strict interpretation of sovereign immunity in tax litigation and may influence how taxpayers and their attorneys approach the decision to post bonds in tax appeals. Subsequent cases, such as Wells Marine v. United States, have followed this precedent, further solidifying the principle that costs not enumerated in § 1920 cannot be awarded against the United States.

