Kurt Orban Company, Inc. v. Commissioner of Internal Revenue, 90 T. C. 275 (1988)

The effective date of tax payment for withholding obligations is the due date of the annual return, not the date of deposit.

Summary

In Kurt Orban Co. v. Commissioner, the U. S. Tax Court ruled that the effective date for payment of withholding tax under sections 1442 and 1461 of the Internal Revenue Code is the due date of the annual return (Form 1042), not the earlier deposit date. The court determined that the last date prescribed for payment of the 30% withholding tax on interest paid to foreign subsidiaries was March 15, 1982, the due date of Form 1042 for 1981. This ruling subjected the taxpayer to an addition to tax for negligence under section 6653(a)(2), effective for taxes due after December 31, 1981.

Facts

Kurt Orban Company, Inc. (petitioner) failed to withhold and pay a 30% tax on interest payments made to its wholly owned foreign subsidiaries, Claremont Insurance Services, Ltd. and Intercargo, Ltd. , in November 1981. The company also did not file the required Form 1042 for 1981 by the March 15, 1982 deadline. The Commissioner determined deficiencies and additions to tax, including an addition under section 6653(a)(2) for negligence, applicable to taxes due after December 31, 1981.

Procedural History

The Commissioner issued a notice of deficiency on December 13, 1985, for the 1981 withholding tax and additions. The case was fully stipulated and submitted to the U. S. Tax Court. The petitioner conceded liability for the deficiency and other additions to tax but contested the applicability of the section 6653(a)(2) addition, arguing that the last date prescribed for payment was before December 31, 1981.

Issue(s)

1. Whether the effective date of section 6653(a)(2) makes it applicable to the underpayment of withholding tax by the petitioner for the year 1981.

Holding

1. Yes, because the last date prescribed for payment of the 30% withholding tax under sections 1442 and 1461 was March 15, 1982, the due date of Form 1042 for 1981, which falls after December 31, 1981, thus making section 6653(a)(2) applicable.

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Court’s Reasoning

The court reasoned that although the regulations required deposits of withheld taxes to be made before the end of December 1981, these deposits were not considered payments until the due date of Form 1042, as per section 1. 6302-2(b)(5) of the Income Tax Regulations. The court emphasized that the last date prescribed for payment was the due date of the annual return, March 15, 1982, which aligned with the effective date of section 6653(a)(2). The court also noted that the legislative history supported equating the last date for payment with the due date of the return. This interpretation was crucial in applying the negligence addition to tax, ensuring that the new provision could affect taxpayers who failed to meet their withholding obligations after its enactment.

Practical Implications

This decision clarifies that the effective date for payment of withholding taxes is the due date of the annual return, not the deposit date, which has significant implications for taxpayers and tax practitioners. It emphasizes the importance of timely filing of Form 1042 to avoid penalties and additions to tax under section 6653(a)(2). Practitioners must advise clients to ensure all withholding obligations are met and reported by the return’s due date. The ruling also impacts how similar cases are analyzed, focusing on the due date of the return as the key date for determining the applicability of tax provisions with effective dates tied to payment deadlines. Subsequent cases have applied this principle in determining the timeliness of tax payments and the applicability of penalties.

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