Kovens v. Commissioner, 87 T. C. 125 (1986)

The termination of a tax assessment extension agreement requires actual receipt of the notice of termination by the IRS, not merely the mailing of it by the taxpayer.

Summary

In Kovens v. Commissioner, the Tax Court held that the termination of a Form 872-A agreement, which extends the time for the IRS to assess tax, is effective upon the IRS's receipt of the Form 872-T termination notice, not upon its mailing by the taxpayer. Petitioners, who had signed a Form 872-A agreement for several tax years, attempted to terminate it by mailing a photocopy of Form 872-T after facing difficulties in obtaining the original. The court rejected the petitioners' argument that the IRS's failure to provide the form should allow the termination to be effective upon mailing, emphasizing the necessity of actual notice to the IRS for valid termination.

Facts

Petitioners filed federal income tax returns for tax years 1971 through 1978. They entered into a Form 872-A agreement with the IRS in March 1980, which extended the period for the IRS to assess tax. In October 1981, petitioners sought to terminate this agreement to prevent the IRS from raising new issues in a notice of deficiency. They encountered difficulties obtaining Form 872-T, necessary for termination, and ultimately used a photocopy of the form, which they mailed on November 5, 1981, and was received by the IRS on November 9, 1981.

Procedural History

The petitioners moved to dismiss for lack of jurisdiction, arguing that the IRS's notice of deficiency was untimely due to the unavailability of Form 872-T. The Tax Court bifurcated the procedural issue from the substantive issues and held a hearing on the motion to dismiss, ultimately ruling against the petitioners.

Issue(s)

1. Whether the Form 872-A agreement's termination is effective upon mailing of Form 872-T by the taxpayer or upon its receipt by the IRS.

Holding

1. No, because the Form 872-A agreement requires actual receipt of the Form 872-T by the IRS to effectuate termination, not merely the mailing of it by the taxpayer.

Court's Reasoning

The Tax Court focused on the clear language of the Form 872-A agreement, which

© 2025 SCOTUSreports.com. All rights reserved.

specifies that termination occurs upon receipt of Form 872-T by the IRS. The court rejected the petitioners' argument that the IRS's failure to provide the form constituted a breach of an implied promise, stating that no such breach occurred since the petitioners eventually obtained and used the form. The court also noted that the petitioners were not prejudiced by the delay in obtaining the form, as they achieved their goal of limiting the IRS's ability to raise new issues. The court emphasized that a consent to extend the period for assessment is not a contract but a unilateral waiver by the taxpayer, and while contract principles may guide the interpretation, they do not control the outcome. The court cited prior cases, such as Stange v. United States and Piarulle v. Commissioner, to support its reasoning.

Practical Implications

This decision underscores the importance of actual notice in the context of tax assessment extension agreements. Taxpayers and their representatives must ensure that the IRS receives the termination notice, as mere mailing does not suffice. This ruling may influence how taxpayers approach the termination of such agreements, ensuring they have sufficient time to obtain the necessary forms and deliver them to the IRS. Practitioners should be aware of potential delays in obtaining IRS forms and plan accordingly. The decision also highlights the need for the IRS to improve the availability of forms like the 872-T to avoid similar issues in the future. Subsequent cases, such as Grunwald v. Commissioner, have reinforced the requirement of actual notice for the termination of assessment extension agreements.

© 2025 SCOTUSreports.com. All rights reserved.