***Solomon v. Commissioner*, 88 T.C. 10 (1987)**

When two statutes amending the same section of the Internal Revenue Code are enacted in close succession and conflict, the court must first examine the texts of the statutes themselves to resolve the conflict and may resort to legislative history only if uncertainties remain.

Summary

The Tax Court addressed the issue of which of two conflicting statutory amendments to I.R.C. § 6661(a) applied. Both the Tax Reform Act of 1986 and the Omnibus Budget Reconciliation Act of 1986 amended the section to change the penalty for substantial understatement of income tax liability. The court held that the latter act, which was enacted earlier, controlled because it explicitly stated its amendment was intended to supersede the former. The court emphasized that it must first look to the texts of the statutes to resolve conflicts and, absent any ambiguity, the language of the statutes should control.

Facts

The IRS determined deficiencies in the taxpayers' federal individual income tax and additions to tax for 1981 and 1982. The taxpayers and the IRS settled all issues except for the correct rate of the addition to tax under I.R.C. § 6661 for 1982. The IRS originally determined the addition to tax for 1982 at 10 percent. However, the IRS asserted at trial that a higher rate was applicable due to amendments to § 6661 by the Tax Reform Act of 1986 (TRA 86) and the Omnibus Budget Reconciliation Act of 1986 (OBRA 86). TRA 86 increased the rate to 20 percent, while OBRA 86 increased the rate to 25 percent and stated that the change was to be in effect, regardless of the changes proposed by TRA 86.

Procedural History

The case was brought before the United States Tax Court. The parties settled all issues except the correct rate of the addition to tax under I.R.C. § 6661 for 1982. The court directed both sides to file briefs on the single remaining legal issue.

Issue(s)

1. Whether the Tax Court has jurisdiction to determine a higher addition to tax than was stated in the notice of deficiency when the IRS asserted the increased amount at trial.

2. Whether the correct rate of addition to tax under I.R.C. § 6661(a) for 1982 is 20 percent (as per the Tax Reform Act of 1986) or 25 percent (as per the Omnibus Budget Reconciliation Act of 1986).

Holding

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1. Yes, because the IRS claimed the increased amount at trial, as required by I.R.C. § 6214(a), and the issue was tried with the consent of the parties.

2. Yes, because OBRA 86, which was enacted earlier and explicitly stated its change was to be in effect over the one proposed by TRA 86, controls the determination of the rate of the addition to tax under I.R.C. § 6661(a) for 1982.

Court's Reasoning

The court first addressed a procedural matter, determining that it could consider a higher addition to tax than what was in the notice of deficiency. Under I.R.C. § 6214(a), the court has jurisdiction to determine an increased deficiency if the IRS asserts a claim at or before the hearing. The court found that the IRS properly asserted this claim at trial because the taxpayers were informed that the IRS was seeking an increased addition and the parties agreed that the rate was the sole remaining issue.

The court turned to the central issue: which of the two conflicting amendments to I.R.C. § 6661(a) controlled. The court examined both the Tax Reform Act of 1986 (TRA 86) and the Omnibus Budget Reconciliation Act of 1986 (OBRA 86). TRA 86 would have raised the penalty to 20%, and OBRA 86 would have raised the penalty to 25%. The court reasoned that the language of OBRA 86 explicitly stated the amendment made by OBRA 86 would control over the TRA 86 amendment. Because the language of the two statutes clearly stated the order of priorities, the court concluded that the rate of addition to tax under § 6661(a) was 25 percent.

The court cited *Watt v. Alaska* to establish the proper way to resolve conflicts in enacted laws, which is to look at the texts of the statutes themselves. The court emphasized the legislative intent if uncertainties remain. The court found that the language of the two statutes was unambiguous and the Congress intended for the OBRA 86 amendment to control. The court quoted *Watt v. Alaska*, "repeals by implication are not favored."

Practical Implications

This case provides a framework for resolving conflicts between subsequently enacted statutes. The court's focus on the plain language of the statutes, and its recognition of a clear congressional directive regarding which statute should control, underscores the importance of careful statutory construction. When dealing with overlapping legislation, attorneys must thoroughly analyze the text of each statute, looking for express statements about how the provisions should interact or be applied. Further, this case underscores the need to assess all pleadings and be prepared to amend them at or before trial to ensure that the court can rule on issues that are raised by the evidence.

Cases following *Solomon* have continued to apply its methodology to resolve

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conflicts in statutory interpretation, emphasizing the need for courts to prioritize the plain language of the statute when ascertaining Congressional intent.

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