T.C. Memo. 1988-432

When a Form 872-A, Special Consent to Extend the Time to Assess Tax, specifies termination by submitting Form 872-T, that method is exclusive, and the extension does not terminate merely by the passage of a 'reasonable time'.

Summary

The taxpayers, Dr. and Mrs. Camara, executed multiple Forms 872-A, which are indefinite extensions of the statute of limitations for assessment of income tax, for several tax years. These forms stipulated that termination required either the taxpayer submitting Form 872-T or the IRS issuing a notice of deficiency. The Camaras argued that the extensions should be considered terminated after a 'reasonable time' had passed, even though they never filed Form 872-T. The Tax Court held that because the Form 872-A explicitly detailed the method of termination, that method was exclusive. The court rejected the 'reasonable time' argument, emphasizing the need for certainty in tax administration and upholding the clear terms of the agreement. Therefore, the notice of deficiency was timely.

Facts

Dr. and Mrs. Camara filed joint income tax returns for 1974, 1975, and 1977.
Prior to the years in question, they had executed Forms 872, extending the statute of limitations for 1974 and 1975 to December 31, 1980.
Subsequently, they signed Forms 872-A for tax years 1970 through 1976 and a separate Form 872-A for 1977. These Forms 872-A contained a provision stating that the extension could be terminated by the taxpayer submitting Form 872-T, by the IRS mailing Form 872-T, or by the IRS mailing a notice of deficiency.
The Camaras never submitted Form 872-T to the IRS for any of the tax years in question.
On December 9, 1983, the IRS mailed an examination report to the Camaras for the years in issue.
In January 1984, the Camaras protested the examination report, arguing that the statute of limitations had expired.
A conference was held on March 16, 1984, to discuss the protest.
On May 19, 1986, the IRS mailed a statutory notice of deficiency to the Camaras.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in the Camaras' federal income tax for the years 1974, 1975, 1977. The Camaras petitioned the Tax Court, arguing that the statute of limitations barred assessment of the deficiencies. The Tax Court reviewed the case to determine whether the statute of limitations had expired.

Issue(s)

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1. Whether an indefinite extension of the statute of limitations for assessment of income tax, effected through Form 872-A which specifies termination by Form 872-T, expires after a 'reasonable time' if the taxpayer does not submit Form 872-T, and the IRS has not issued a notice of deficiency?

Holding

1. No. The Tax Court held that because the Form 872-A explicitly provided methods for termination, including the taxpayer's submission of Form 872-T, these methods are exclusive. The statute of limitations was not terminated by the passage of a 'reasonable time' alone because the taxpayers did not utilize the specified method of termination.

Court's Reasoning

The court reasoned that a consent to extend the statute of limitations is an agreement requiring mutual consent, although it is essentially a unilateral waiver by the taxpayer. The terms of Form 872-A signed by the Camaras were clear: termination required the submission of Form 872-T. The court distinguished earlier cases that implied a 'reasonable time' limit for indefinite extensions, noting those cases involved agreements that did not specify a method of termination. In those earlier cases, courts filled a gap in the agreement. Here, no gap existed. The court acknowledged its prior decision in *McManus v. Commissioner*, which included language suggesting that indefinite waivers could terminate after a 'reasonable time' or upon reasonable notice. However, the court clarified that *McManus* also quoted favorably from *Greylock Mills v. Commissioner*, which suggested termination only after the taxpayer gives notice. The court explicitly stated, "To the extent that *McManus v. Commissioner*, supra, requires a different result, we will no longer follow it." The Tax Court emphasized the importance of certainty in the use of Form 872-A and that interpreting it to terminate after a 'reasonable time' would create uncertainty and necessitate fact-specific inquiries in each case. The court cited *Grunwald v. Commissioner* and *Tapper v. Commissioner*, which held that the current version of Form 872-A can only be terminated by Form 872-T or a notice of deficiency. The court also noted the Ninth Circuit's decision in *Kinsey v. Commissioner*, which affirmed the necessity of Form 872-T for termination. Regarding the policy argument that extensions should facilitate settlement, the court found that this general policy did not override the specific terms of the agreement. Furthermore, Revenue Procedure 79-22 outlines additional purposes of indefinite extensions, such as reducing administrative burden, which are served by enforcing the Form 872-T requirement.

Practical Implications

Camara v. Commissioner establishes a clear rule that when taxpayers sign Form 872-A agreements that specify termination by Form 872-T, they must adhere to those terms. The 'reasonable time' argument for terminating such extensions is

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invalid when a specific termination method is provided in the agreement. This case provides certainty for both taxpayers and the IRS regarding the duration of statute of limitations extensions in cases using Form 872-A. Legal practitioners should advise clients that if they wish to terminate a Form 872-A extension, and the form requires Form 872-T, they must file Form 872-T to effectively terminate the extension period. Subsequent cases will likely follow this strict interpretation, reinforcing the importance of adhering to the explicit terms of Form 872-A agreements to avoid statute of limitations issues.

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