Mailman v. Commissioner, 91 T. C. 1079 (1988)

The IRS's discretion to waive tax penalties under section 6661(c) is subject to judicial review under an abuse of discretion standard.

Summary

In Mailman v. Commissioner, Alan H. Mailman, a compulsive gambler who embezzled funds, failed to report this income on his tax returns for 1981-1983. The IRS imposed penalties for substantial understatements of tax under section 6661, which Mailman sought to have waived. The Tax Court held that the IRS's refusal to waive these penalties was subject to judicial review and that the appropriate standard was whether the IRS abused its discretion. The court found no such abuse, thus upholding the penalties. This case established that judicial review applies to the IRS's discretionary decisions regarding penalty waivers.

Facts

Alan H. Mailman, employed as a credit manager, embezzled funds from his employer, Fishman & Tobin, Inc. , during 1981-1983, totaling $19,988, $155,386, and $43,870, respectively. He used these funds to support his gambling habit but did not report them as income on his federal tax returns for those years. Mailman also operated a flea market stall, failing to report income from this source as well. He conceded liability for income tax deficiencies and other penalties but contested the IRS's refusal to waive the section 6661 penalty for substantial understatements of tax.

Procedural History

The IRS determined deficiencies and additions to tax for Mailman's 1981-1983 tax returns. Mailman conceded liability for most of these but challenged the section 6661 penalty. The case came before the United States Tax Court, which addressed whether the IRS's refusal to waive the penalty was subject to judicial review and whether such refusal constituted an abuse of discretion.

Issue(s)

1. Whether the IRS's refusal to waive the section 6661 addition to tax pursuant to section 6661(c) is subject to judicial review.
2. If subject to review, what is the appropriate standard of review?
3. Did the IRS abuse its discretion in refusing to waive the section 6661 penalty in this case?

Holding

1. Yes, because the statute and regulations provide ascertainable standards for review, and there are no special circumstances warranting judicial abstention.

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2. The appropriate standard of review is whether the IRS abused its discretion.
3. No, because Mailman failed to show that the IRS's determination was arbitrary, capricious, or without sound basis in fact.

Court's Reasoning

The court reasoned that the IRS's discretion under section 6661(c) was subject to judicial review, as the statute did not expressly preclude review, and the Administrative Procedure Act presumes reviewability unless precluded by law. The court adopted an abuse of discretion standard, noting that while deference should be given to the IRS's judgment, the court must ensure the decision was not arbitrary or capricious. In applying this standard, the court found that Mailman did not provide sufficient evidence of reasonable cause or good faith, particularly failing to show efforts to assess his proper tax liability or credible evidence of his pathological gambling's impact on his tax reporting. The court emphasized that the IRS's discretion to waive penalties under section 6661(c) is not unfettered and must be exercised within the bounds of the law and regulations.

Practical Implications

This decision has significant implications for tax practitioners and taxpayers seeking penalty relief. It establishes that the IRS's discretionary decisions to waive penalties can be reviewed by courts, ensuring accountability and fairness. Practitioners must now consider the potential for judicial review when advising clients on penalty waivers, emphasizing the need to demonstrate reasonable cause and good faith. The case also highlights the importance of presenting thorough documentation and credible evidence to support claims for penalty relief. Subsequent cases have cited Mailman for the principle that IRS discretion is not absolute and must be exercised reasonably, influencing how similar cases are litigated and resolved.

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