Ware v. Commissioner, 92 T. C. 1267 (1989)

A party may raise a new issue on brief if it does not prejudice the opposing party by limiting their opportunity to present evidence.

Summary

In Ware v. Commissioner, the U. S. Tax Court allowed the Commissioner to raise the issue of an "unrealized receivable" under section 751 on brief, despite the petitioners' objection. The court found that the petitioners were not prejudiced by the late introduction of this issue, as they failed to show any additional evidence they would have presented. This decision underscores that while new issues on brief are generally disfavored, they are permissible if they do not unfairly limit the opposing party's ability to respond.

Facts

The Wares moved for reconsideration of a prior Tax Court opinion, arguing that the Commissioner should not have been allowed to raise the issue of an "unrealized receivable" under section 751 on brief. The Commissioner had initially argued that certain payments were fees earned by Mr. Ware, taxable as ordinary income. The Wares contended that this new issue was inconsistent with the Commissioner's original position and caused them prejudice.

Procedural History

The Wares filed a motion for reconsideration following the Tax Court's initial decision in T. C. Memo. 1989-165. The court had previously allowed the Commissioner to raise the "unrealized receivable" issue on brief, leading to the Wares' motion to vacate the decision. The Tax Court denied the Wares' motion for reconsideration.

Issue(s)

1. Whether the Commissioner should be precluded from raising the issue of an "unrealized receivable" under section 751 on brief, given it was not part of the original argument.

Holding

1. No, because the Wares were not prejudiced by the Commissioner's ability to raise the new issue on brief, as they did not specify any additional evidence they would have presented if informed earlier.

Court's Reasoning

The court emphasized that the rule against raising new issues on brief is not

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absolute but depends on whether the opposing party is prejudiced. The Wares' claim of "extreme prejudice" was unsupported by evidence of what additional proof they might have offered. The court noted that the new issue was closely related to section 741, which the Wares had argued, and that the Commissioner would have prevailed even if the burden of proof had been shifted. The court cited Graham v. Commissioner and Seligman v. Commissioner to support its discretion in allowing new issues on brief when no prejudice is shown. The decision also noted that courts can decide cases on grounds not raised by the parties if appropriate.

Practical Implications

This decision impacts how attorneys should approach new issues raised on brief in tax cases. It clarifies that while new issues are generally disfavored, they can be considered if they do not prejudice the opposing party. Practitioners should be prepared to address potential new issues throughout the litigation process, especially in tax cases where statutory sections are interrelated. This ruling may encourage parties to more thoroughly prepare their cases to anticipate alternative arguments. It also serves as a reminder that courts have discretion to decide cases on grounds not originally argued by the parties, potentially affecting how cases are argued and decided in the future.

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