Long v. Commissioner, 93 T. C. 352 (1989)

The doctrine of constructive payment does not apply to satisfy an account receivable established under Revenue Procedure 65-17.

Summary

In Long v. Commissioner, the U. S. Tax Court ruled that the doctrine of constructive payment does not apply to an account receivable established between related corporations under Revenue Procedure 65-17. The case involved William R. Long, who sought to apply the doctrine to avoid constructive dividend treatment. The court denied Long's motion for reconsideration, emphasizing that Rev. Proc. 65-17 requires actual payment in money, not constructive payment, to satisfy the account receivable. The decision clarified that the terms of the closing agreement and the revenue procedure mandate an actual transfer of funds to avoid constructive dividend treatment.

Facts

William R. Long, the controlling shareholder, moved for reconsideration of the Tax Court's opinion in Long v. Commissioner, 93 T. C. 5 (1989). The initial opinion held that an account receivable established between related corporations under Rev. Proc. 65-17, which was not offset by a preexisting account payable or otherwise satisfied within the allowed methods, constituted a constructive dividend to Long and a contribution to the capital of the transferee corporation. Long argued that the doctrine of constructive payment should apply to the transfer of assets required by the revenue procedure.

Procedural History

The Tax Court initially ruled in Long v. Commissioner, 93 T. C. 5 (1989), that the unsatisfied portion of the account receivable was a constructive dividend. Long filed a motion for reconsideration under Rule 161 of the Tax Court Rules of Practice and Procedure, which was denied by the court in the supplemental opinion at 93 T. C. 352 (1989).

Issue(s)

1. Whether the doctrine of constructive payment applies to the satisfaction of an account receivable established pursuant to Rev. Proc. 65-17.

Holding

1. No, because Rev. Proc. 65-17 requires payment "in the form of money," and the closing agreement required payment in "United States dollars," which precludes the application of the constructive payment doctrine.

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Court’s Reasoning

The court’s reasoning focused on the interpretation of Rev. Proc. 65-17 and the closing agreement. The court emphasized that the revenue procedure explicitly required payment in money, and the closing agreement similarly required payment in U. S. dollars. The court rejected Long’s argument that constructive payment could satisfy these requirements, noting that accepting such an interpretation would render the closing agreement futile. The court distinguished this case from prior cases like White v. Commissioner and F. D. Bissette & Son, Inc. v. Commissioner, where the constructive receipt doctrine was applied in different contexts. The court found that the language of Rev. Proc. 65-17 and the closing agreement was unambiguous in requiring actual payment, and thus, the doctrine of constructive payment did not apply.

Practical Implications

This decision clarifies that taxpayers cannot use the doctrine of constructive payment to satisfy obligations under Rev. Proc. 65-17. Practitioners should ensure that actual payments are made in accordance with the terms of such agreements to avoid unintended tax consequences like constructive dividends. This ruling impacts how related corporations structure their financial transactions and emphasizes the importance of adhering to the specific payment requirements in revenue procedures. Subsequent cases involving similar revenue procedures will likely cite this decision to support the necessity of actual payment in money.

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