Gold-N-Travel, Inc. v. Commissioner, 93 T. C. 618, 1989 U. S. Tax Ct. LEXIS 149, 93 T. C. No. 52 (1989)

The Tax Matters Person (TMP) for an S corporation must be a shareholder with a profit interest in the corporation.

Summary

In Gold-N-Travel, Inc. v. Commissioner, the U. S. Tax Court addressed the designation of a Tax Matters Person (TMP) for an S corporation. The case arose when Wayne M. Haskins, the president of Gold-N-Travel, Inc. , filed a petition as the TMP despite not being a shareholder. The court ruled that a TMP for an S corporation must be a shareholder, and without a formal designation, the shareholder with the largest profit interest should be the TMP. The court allowed the possibility of curing the imperfect petition by filing an amended petition, if it could be shown that Haskins was authorized to file on behalf of a shareholder. This decision clarified the requirements for TMP designation in S corporations and provided flexibility for correcting procedural errors.

Facts

Gold-N-Travel, Inc. , an S corporation, received a Notice of Final S Corporation Administrative Adjustment (FSAA) from the IRS for the year ended December 31, 1983. Wayne M. Haskins, the corporate president but not a shareholder, filed a petition as the TMP. The IRS moved to dismiss the petition for lack of jurisdiction, arguing that only a shareholder could be a TMP. The corporation had four shareholders, and the IRS suggested Bruce E. Baird as the proper TMP due to his alphabetical listing among shareholders with equal profit interests.

Procedural History

The IRS issued an FSAA to Gold-N-Travel, Inc. , on February 20, 1987. On May 21, 1987, Wayne M. Haskins filed a petition as the TMP. The IRS responded with an answer on July 20, 1987, admitting Haskins as the TMP. After a pretrial conference on October 4, 1988, the IRS moved to dismiss the petition on July 24, 1989, for lack of jurisdiction, asserting that Haskins, as a non-shareholder, could not be the TMP. The Tax Court heard the case and issued its opinion on November 21, 1989.

Issue(s)

1. Whether the Tax Matters Person (TMP) of an S corporation must be a shareholder with a profit interest in the corporation?
2. Whether an imperfect petition filed by a non-shareholder can be cured by an amended petition from a proper shareholder?

Holding

1. Yes, because the court interpreted the partnership provisions applicable to S corporations to require that the TMP must have a shareholder interest in the corporation.
2. Yes, because the court held that the defects in an imperfect petition may be cured by an amended petition if it can be shown that the original signatory was authorized to file on behalf of the non-signing TMP shareholder.

Court's Reasoning

The court applied the partnership provisions to S corporations as mandated by section 6244 of the Internal Revenue Code, which extends partnership audit and litigation rules to S corporations. The court reasoned that since partnerships require a general partner with a profit interest to be the tax matters partner, a similar requirement should apply to S corporations, necessitating a shareholder with a profit interest as the TMP. The absence of regulations necessitated the direct application of these partnership rules. The court also considered the legislative history indicating that Congress anticipated modifications for S corporations, but in the absence of such regulations, the partnership rules were directly applied. The court rejected the IRS's strict adherence to its instructions on TMP designation, instead focusing on the statutory framework. For the second issue, the court relied on prior cases allowing for the amendment of imperfect petitions, emphasizing its discretion to permit such amendments if proper authorization could be demonstrated.

Practical Implications

This decision establishes that only shareholders can serve as TMPs for S corporations, affecting how S corporations designate their TMPs. Practitioners must ensure that the TMP has a shareholder interest, and if not formally designated, the shareholder with the largest profit interest will be considered the TMP. This ruling also provides a mechanism for correcting procedural errors in filing petitions by allowing amendments if the original filing was authorized. Future cases involving S corporation audits will need to adhere to these requirements, and businesses will need to carefully manage their TMP designations to avoid jurisdictional challenges. This decision may influence the IRS to issue clearer guidelines or regulations regarding TMP designations for S corporations.