Gerald A. Galusha, Petitioner v. Commissioner of Internal Revenue, Respondent, 95 T. C. 218 (1990)

The term 'perishable' in the context of a jeopardy assessment under IRC section 6336 refers to property that is subject to quick deterioration or spoilage, not long-term depreciation.

Summary

In Galusha v. Commissioner, the U. S. Tax Court addressed whether a seized boat, the 'Anna', could be sold under a jeopardy assessment. The IRS argued the boat was 'perishable' and would depreciate rapidly if not sold immediately. The court defined 'perishable' as subject to quick decay, not long-term deterioration, and found the boat not perishable, as it could last through the litigation process without significant value loss. The decision emphasizes the need for the IRS to justify immediate sales of seized property during tax disputes.

Facts

Gerald Galusha, previously involved in illegal activities, used proceeds from selling his residence to purchase a 47-foot wood-hulled boat, 'Anna', for $72,500. The IRS made a jeopardy assessment against Galusha, seized the boat, and planned to sell it, asserting it was 'perishable'. Galusha filed a petition and sought a stay of the sale, arguing the boat was not perishable and could be maintained without great expense or value loss.

Procedural History

The IRS made a jeopardy assessment and seized Galusha's boat, planning its sale. After receiving a notice of deficiency, Galusha petitioned the U. S. Tax Court and moved for a stay of the sale under IRC section 6863(b)(3). The Tax Court reviewed the case, focusing on the definition of 'perishable' under IRC section 6336.

Issue(s)

1. Whether the seized boat 'Anna' is 'perishable' within the meaning of IRC section 6336.
2. Whether the boat may become 'greatly reduced in price or value' under IRC sections 6863(b)(3)(B)(ii) and 6336.
3. Whether the boat 'cannot be kept without great expense' under IRC sections 6863(b)(3)(B)(iii) and 6336.

Holding

1. No, because the boat does not deteriorate quickly and can be maintained through the litigation process without significant value loss.
2. No, because the IRS failed to show that a great loss in value is likely to occur in

the foreseeable future.
3. No, because the costs of maintaining the boat are not ‘great’ in relation to its value.

Court’s Reasoning

The court interpreted ‘perishable’ as property subject to quick decay, not long-term depreciation. They noted that most property depreciates over time, but the term ‘perishable’ must be construed narrowly to prevent the exception from swallowing the rule against selling seized property during tax litigation. The boat ‘Anna’, despite being wood-hulled, was not found to be perishable as it could be maintained without significant value loss during the legal proceedings. The IRS’s argument about the boat’s potential for rapid deterioration was based on its condition in dry dock, a situation the IRS could remedy by returning the boat to the water. The court also rejected the IRS’s claim that the boat’s value would greatly reduce without immediate sale, as no evidence supported this claim. Finally, the court found that the monthly maintenance costs did not constitute a ‘great expense’ relative to the boat’s value.

Practical Implications

This decision clarifies that ‘perishable’ in the context of jeopardy assessments should be interpreted narrowly, focusing on quick decay rather than long-term depreciation. Practitioners should be aware that the IRS must provide clear evidence of rapid deterioration to justify the immediate sale of seized property. This ruling may encourage taxpayers to challenge IRS actions more vigorously when property is seized under jeopardy assessments, particularly when the property’s value is not at immediate risk. The decision also highlights the importance of the IRS properly maintaining seized property to prevent unnecessary depreciation claims.

