Barnette v. Commissioner, T.C. Memo. 1990-618

Civil fraud penalties under 26 U.S.C. § 6653(b), which are a percentage of the tax deficiency, are generally considered remedial and do not constitute double jeopardy even after a criminal conviction for tax evasion, unless the penalty is overwhelmingly disproportionate to the government's damages.

Summary

Petitioners Larry D. Barnette and Allied Management Corp. challenged civil fraud penalties under 26 U.S.C. § 6653(b) following Larry Barnette's criminal conviction for tax evasion. They argued that these penalties violated the Double Jeopardy Clause as they were punitive rather than remedial. The Tax Court, considering the Supreme Court's decision in *United States v. Halper*, held that the civil fraud penalty, calculated as 50% of the tax deficiency, was rationally related to compensating the government for its losses, including investigation and recovery costs. Therefore, it was deemed remedial and not a second punishment triggering double jeopardy concerns. The court granted the Commissioner's motion for a protective order, denying the petitioners' discovery request for IRS expense information.

Facts

Larry D. Barnette was criminally convicted of tax evasion under 26 U.S.C. § 7201 for the years 1978 and 1979, among other offenses. Allied Management Corp. was convicted on other, non-tax-related charges. Following these criminal convictions, the IRS issued statutory notices of deficiency to Barnette and Allied Management Corp., including additions to tax for civil fraud under 26 U.S.C. § 6653(b). Barnette and Allied Management Corp. sought discovery from the IRS regarding expenses incurred in the criminal and civil investigations, arguing this information was relevant to their double jeopardy claim.

Procedural History

Petitioners sought discovery through interrogatories. The Commissioner moved for a protective order under Tax Court Rule 103, arguing the discovery was burdensome, irrelevant, and premature. The Tax Court considered the motion for a protective order, focusing on whether the petitioners had presented a colorable claim of double jeopardy that would make the requested discovery relevant.

Issue(s)

1. Whether the civil fraud penalties under 26 U.S.C. § 6653(b), imposed after a criminal conviction for tax evasion, constitute a second punishment for the same offense in violation of the Double Jeopardy Clause of the Fifth Amendment.
2. Whether the petitioners made a colorable showing of double jeopardy violation

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sufficient to warrant discovery of the IRS's expenses in investigating the case.

Holding

1. No, the civil fraud penalties under 26 U.S.C. § 6653(b) do not constitute a second punishment in violation of the Double Jeopardy Clause in this case because they are considered remedial and rationally related to compensating the government for losses due to tax fraud.
2. No, the petitioners did not make a colorable showing of double jeopardy violation because the civil fraud penalty is not overwhelmingly disproportionate to the government's potential damages; therefore, the requested discovery is not relevant.

Court's Reasoning

The court relied heavily on *United States v. Halper*, 490 U.S. 435 (1989), which established that a civil sanction can constitute punishment for double jeopardy purposes if it is overwhelmingly disproportionate to the damages and serves only retributive or deterrent goals, rather than remedial ones. The court distinguished *Halper*, noting that the civil penalty in that case was a fixed dollar amount per violation, leading to a penalty vastly exceeding the government's actual damages. In contrast, the civil fraud penalty under § 6653(b) is a percentage (50%) of the tax deficiency. The court reasoned that this percentage-based penalty is rationally related to compensating the government for its losses, which include not only the unpaid taxes but also the costs of investigation, detection, and recovery. The court stated, "We cannot say that the civil fraud addition of 50 percent is grossly disproportionate to the damage caused to the Government by the taxpayer's fraud, which includes the loss of the tax itself, plus the costs of investigation, detection, and recovery of the lost money." The court emphasized that unlike the fixed penalty in *Halper*, the § 6653(b) penalty is variable and tied to the actual tax deficiency, making it more likely to be remedial. The court also noted that Allied Management Corp. was not convicted of tax evasion, so no double jeopardy claim existed for that petitioner.

Practical Implications

Barnette v. Commissioner clarifies the application of *United States v. Halper* in the context of civil tax fraud penalties. It establishes that standard civil fraud penalties under 26 U.S.C. § 6653(b) are generally considered remedial and do not violate double jeopardy, even after a criminal conviction for tax evasion. To successfully argue double jeopardy in a tax fraud case, a taxpayer would need to demonstrate that the civil penalty, as applied, is overwhelmingly disproportionate to the government's actual damages, including ancillary costs like investigation and litigation. This case reinforces that the 50% civil fraud penalty is typically viewed as compensatory and not punitive. It highlights the distinction between fixed penalties (like in *Halper*) and percentage-based penalties (like in § 6653(b)) in double jeopardy

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analysis. Later cases applying *Halper* and its progeny in tax contexts must consider whether the civil penalty has a rational relationship to the government's harm, with percentage-based penalties generally passing this test unless extraordinary disproportionality can be shown.

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