Aufleger v. Commissioner, 99 T. C. 109, 1992 U. S. Tax Ct. LEXIS 57, 99 T. C. No. 5 (July 23, 1992)

The statute of limitations for assessing income tax attributable to S corporation items is suspended for 150 days plus one year after mailing the notice of final S corporation administrative adjustment to the tax matters person, and may be extended further if items become non-S corporation items.

Summary

In Aufleger v. Commissioner, the Tax Court addressed the statute of limitations for assessing a tax deficiency related to S corporation items. The IRS sent a notice of final S corporation administrative adjustment (FSAA) to the tax matters person, which suspended the limitations period for 150 days plus one year. The IRS failed to timely notify shareholder Aufleger of the FSAA, causing his items to become non-S corporation items, extending the limitations period by another year. The court held that the notice of deficiency was timely because the limitations period, including all extensions, had not expired when it was sent.

Facts

Jokers, King of Comedy, Inc. , an S corporation, filed its 1984 return on June 6, 1985, reporting a net ordinary loss. The IRS mailed the FSAA to the tax matters person on March 2, 1987, and to all notice shareholders except Aufleger on March 3, 1987. Aufleger received notice on June 29, 1989, and did not elect to have the FSAA apply to him. The IRS sent a notice of deficiency to Aufleger and his wife on June 7, 1990, which they contested, arguing the limitations period had expired.

Procedural History

The IRS began an administrative examination of Jokers on July 14, 1986, and issued the FSAA on March 2, 1987. No timely judicial review was sought by the tax matters person or notice shareholders within the 90 and 60-day periods, respectively. A late petition by shareholders Chouteau was dismissed by the Tax Court on December 8, 1987. Aufleger received late notice on June 29, 1989, and the IRS sent a notice of deficiency to Aufleger and his wife on June 7, 1990. The Auflegers filed a petition in the Tax Court on September 4, 1990.

Issue(s)

1. Whether the mailing of the FSAA to the tax matters person suspended the running of the 3-year limitations period under section 6229(a) for 150 days plus one year as provided by section 6229(d)?
2. Whether the untimely mailing of the FSAA to Aufleger and his failure to elect to have the FSAA apply to him extended the limitations period under section 6229(f)?
3. Whether the limitations period expired before the IRS mailed the notice of deficiency to Aufleger and his wife on June 7, 1990?

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Holding

1. Yes, because the mailing of the FSAA to the tax matters person suspended the limitations period for 150 days plus one year under section 6229(d).
2. Yes, because the untimely mailing of the FSAA to Aufleger and his failure to elect to have the FSAA apply to him extended the limitations period under section 6229(f).
3. No, because the limitations period, as extended by sections 6229(d) and 6229(f), did not expire before the IRS mailed the notice of deficiency to Aufleger and his wife on June 7, 1990.

Court's Reasoning

The court applied a three-step analysis to determine the limitations period under section 6229. First, it calculated the general 3-year period from the filing of Jokers' return on June 6, 1985, to June 6, 1988. Second, the court suspended this period for 150 days plus one year after the FSAA was mailed to the tax matters person on March 2, 1987, extending the period to November 4, 1989. Third, the court considered the effect of the untimely mailing of the FSAA to Aufleger on June 29, 1989, which converted his items to non-S corporation items, extending the period by another year to June 29, 1990. The court rejected Aufleger's argument that the unexpired part of the 3-year period should not be tacked on after the suspension period, relying on the plain meaning of "suspend" and prior case law. The court also dismissed Aufleger's argument regarding the Chouteaus' untimely petition, stating that the IRS did not rely on it.

Practical Implications

This decision clarifies that the limitations period for assessing tax deficiencies related to S corporation items can be significantly extended by the mailing of the FSAA to the tax matters person and the failure to timely notify all shareholders. Practitioners must be aware that the suspension under section 6229(d) includes tacking on the unexpired part of the 3-year period after the suspension period. Additionally, the conversion of items to non-S corporation items due to untimely notification can extend the period by another year. This ruling impacts how attorneys should advise S corporation shareholders on the timing of tax assessments and the importance of timely notifications from the IRS. Subsequent cases have followed this interpretation, ensuring consistent application of the statute of limitations for S corporation tax assessments.

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