Salvador A. Lombardo et al. v. Commissioner, T. C. Memo. 1993-283

Pre-grand jury investigative materials do not constitute grand jury matter under Rule 6(e) unless they reveal the content of the grand jury proceeding.

Summary

Petitioners in Salvador A. Lombardo et al. v. Commissioner argued that their identities, obtained from a list of clients of a tax preparer under investigation, constituted grand jury matter, thus violating the secrecy provisions of Rule 6(e). The Tax Court held that these materials were not grand jury matter because they were not presented to the grand jury and did not reveal its proceedings. Additionally, the court found that petitioner Lombardo's 1977 tax return was validly filed by his agent. This case clarifies the scope of Rule 6(e) regarding pre-grand jury materials and the validity of returns filed by agents.

Facts

Petitioners engaged Berg & Allen, a law firm promoting a tax scheme, to prepare their tax returns. Following an investigation by the IRS Criminal Investigation Division (CID) into the firm's activities, a grand jury was empaneled in September 1981. Petitioners argued that their identities were derived from a list of Berg & Allen clients obtained during the CID investigation, which they claimed was grand jury matter improperly used for civil audits. Additionally, petitioner Salvador Lombardo contested the validity of his 1977 tax return filed by Berg & Allen.

Procedural History

The case originated from a memorandum opinion in Abeson v. Commissioner, which addressed similar issues but did not resolve the grand jury matter question definitively. The Tax Court issued orders to show cause, which were made absolute due to petitioners' inadequate showings. Petitioners moved to vacate these orders, leading to a trial on the grand jury issue and Lombardo's 1977 return. The court ultimately issued a memorandum opinion in 1993.

Issue(s)

1. Whether the identities of petitioners, obtained from a list of Berg & Allen clients during a pre-grand jury investigation, constituted grand jury matter under Rule 6(e)?
2. Whether petitioner Salvador Lombardo filed a valid 1977 Federal income tax return?

Holding

1. No, because the list of clients was not presented to the grand jury and did not reveal the content of the grand jury proceeding.

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2. Yes, because Lombardo authorized Berg & Allen to file the return on his behalf, and it complied with statutory and regulatory requirements.

Court’s Reasoning

The court applied Rule 6(e) to determine that only materials which reveal the content of grand jury proceedings are protected. The list of clients was not presented to the grand jury, and its use in civil audits did not disclose any grand jury activities. The court emphasized the distinction between pre-grand jury investigative materials and actual grand jury matter. For Lombardo’s return, the court relied on statutory provisions and case law allowing agents to file returns with proper authorization, which Lombardo had granted to Berg & Allen. The court dismissed arguments that Lombardo’s non-signature invalidated the return, citing the power of attorney he had signed.

Practical Implications

This decision clarifies that materials gathered during pre-grand jury investigations do not automatically become grand jury matter unless they reveal grand jury proceedings. Legal practitioners should carefully distinguish between pre-grand jury and actual grand jury materials when dealing with Rule 6(e) issues. For tax practice, the case reinforces that returns filed by authorized agents are valid, impacting how attorneys advise clients on tax preparation and representation. Businesses and individuals involved in tax schemes should be aware that their identities may be used in civil audits without violating Rule 6(e), as long as the information does not stem from grand jury proceedings. Subsequent cases have cited Lombardo when analyzing the scope of Rule 6(e) and the validity of agent-filed returns.

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