Romano v. Commissioner, 101 T. C. 530, 1993 U. S. Tax Ct. LEXIS 78, 101 T. C. No. 35 (T. C. 1993)

A termination assessment does not preclude a taxpayer from contesting the full taxable year's tax liability in the Tax Court.

Summary

In Romano v. Commissioner, the U. S. Tax Court held that a prior District Court judgment reducing a termination assessment to a judgment did not bar the taxpayer from contesting his full-year tax liability for 1983 in the Tax Court. The IRS had seized $359,500 from Romano at the U. S. -Canada border and made a termination assessment for the period up to the seizure date. The IRS later issued a notice of deficiency for the entire year. The Tax Court rejected the IRS's claim of res judicata based on the District Court's decision, emphasizing that the termination assessment only covered a portion of the year and did not determine liability for the entire taxable year.

Facts

On November 17, 1983, U. S. Customs agents seized $359,500 in cash from Benedetto Romano as he attempted to enter Canada. On the same day, the IRS made a termination assessment against Romano for $169,981. After Romano failed to file a 1983 income tax return, the IRS issued a notice of deficiency on October 11, 1984, covering the entire 1983 taxable year. Romano timely petitioned the Tax Court on January 9, 1985. Meanwhile, the IRS obtained a summary judgment in the U. S. District Court for the Eastern District of New York to reduce the termination assessment to judgment. The Second Circuit affirmed the District Court's jurisdiction to do so, despite pending Tax Court proceedings.

Procedural History

The IRS made a termination assessment on November 17, 1983. After Romano failed to file a return, the IRS issued a notice of deficiency on October 11, 1984. Romano petitioned the Tax Court on January 9, 1985. The IRS then sought and obtained a summary judgment in the U. S. District Court to reduce the termination assessment to judgment. The Second Circuit affirmed the District Court's jurisdiction. The Tax Court proceedings were stayed pending a criminal tax evasion charge and a forfeiture proceeding. The IRS moved for summary judgment in the Tax Court, claiming res judicata based on the District Court's decision.

Issue(s)

1. Whether the District Court's judgment reducing the termination assessment to judgment is res judicata, preventing Romano from contesting his 1983 tax liability in the Tax Court.

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Holding

1. No, because the District Court's judgment did not determine Romano's tax liability for the entire 1983 taxable year.

Court's Reasoning

The Tax Court emphasized that a termination assessment, under section 6851, does not terminate the taxable year for all purposes but only for the computation of the tax assessed and collected. The court cited legislative history showing Congress's intent to allow taxpayers to contest their full-year liability in the Tax Court after a termination assessment. The court noted that the District Court's jurisdiction was limited to the termination assessment period (January 1 to November 17, 1983), not the entire year. The Tax Court held that res judicata did not apply because the District Court did not decide the merits of Romano's tax liability for the entire 1983 taxable year. The court also referenced the Ramirez v. Commissioner case, which supports the view that a termination assessment does not create two short taxable years.

Practical Implications

This decision clarifies that a termination assessment does not bar a taxpayer from litigating their full-year tax liability in the Tax Court. Practitioners should note that even if the IRS obtains a judgment on a termination assessment in District Court, the taxpayer retains the right to contest the entire year's liability in the Tax Court. This ruling may encourage taxpayers to challenge termination assessments more vigorously, knowing they can still litigate their full-year tax liability. The case also underscores the importance of considering the entire taxable year when assessing tax liability, even after a termination assessment has been made.

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