Burlage v. Commissioner, T. C. Memo. 1993-448

The IRS may reexamine a tax year without providing notice under section 7605(b) if the reexamination arises from an examination of a different tax year using the same records.

Summary

In Burlage v. Commissioner, the IRS reexamined the petitioners' 1987 tax year after examining their 1988 amended return, using the same records related to a subchapter S corporation's losses. The court held that this reexamination did not violate section 7605(b) as it was not an "unnecessary examination" and did not constitute a "second inspection" of the 1987 records. The decision emphasized that the IRS may reexamine a year without notice if the same records are examined in connection with a different tax year, and highlighted the annual nature of tax assessments, allowing for independent examinations of each year.

Facts

Petitioners resided in Englewood, Colorado. Revenue Agent Burlage examined petitioners' 1987 tax year, allowing a loss from Digby Leasing based on a draft Schedule K-1 and a memorandum provided by petitioners' representative. Later, Agent Chase examined petitioners' 1988 amended return, which included a similar loss from Digby Leasing. Upon reviewing the 1988 records, Agent Chase determined that petitioners lacked sufficient basis for the claimed losses in both 1987 and 1988. He then reexamined the 1987 tax year, leading to a notice of deficiency for 1987 without providing written notice to petitioners.

Procedural History

The IRS issued notices of deficiency for petitioners' 1987, 1988, and 1989 tax years, which were consolidated for trial. The parties resolved all substantive issues except whether Agent Chase's reexamination of the 1987 tax year violated section 7605(b) by being an unnecessary examination or a second inspection without notice.

Issue(s)

1. Whether Agent Chase's reexamination of petitioners' 1987 tax year constituted an "unnecessary examination" under section 7605(b).
2. Whether Agent Chase conducted a "second inspection" of petitioners' 1987 records without providing written notice as required by section 7605(b).

Holding

1. No, because the reexamination was necessary as it was based on information obtained from the 1988 examination and was not barred by the prior examination or agreement.

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2. No, because the reexamination of the 1987 tax year using the same records as the 1988 examination did not constitute a second inspection under section 7605(b).

Court’s Reasoning

The court applied section 7605(b), which aims to limit unnecessary examinations and second inspections without notice. It found that Agent Chase’s reexamination of the 1987 tax year was not unnecessary because it was based on new information from the 1988 examination, and the statute does not limit the number of examinations for the same year. The court also determined that there was no second inspection of the 1987 records since the same records were examined in connection with the 1988 tax year, and each tax year is treated as a separate matter. The court cited cases like United States v. Powell and Curtis v. Commissioner to support its interpretation of section 7605(b). The court noted that the purpose of section 7605(b) is to curb the investigating powers of low-echelon revenue agents, but it does not restrict the IRS from examining subsequent years using the same records.

Practical Implications

This decision allows the IRS greater flexibility to reexamine tax years without providing notice if the same records are relevant to an examination of a different year. Practitioners should be aware that signing a Form 870 does not preclude further examination of the same year. The ruling reaffirms the principle that each tax year is a separate liability, which may affect how taxpayers and their representatives handle ongoing audits and amended returns. Future cases may reference Burlage when addressing the scope of section 7605(b) and the IRS’s ability to reexamine tax years based on information from subsequent years.

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