Miller v. Commissioner, 104 T. C. 330 (1995)

The election to forego the carryback period for net operating losses (NOLs) under section 172(b)(3)(C) of the Internal Revenue Code applies indivisibly to both regular NOLs and alternative minimum tax (AMT) NOLs.

Summary

In Miller v. Commissioner, the taxpayers attempted to carry forward their regular NOL while carrying back their AMT NOL from the same tax year, asserting that the two could be treated independently. The Tax Court held that the election to waive the carryback period under section 172(b)(3)(C) applies to both types of NOLs and cannot be split. The court found the taxpayers' election statement, which used the term "net operating loss" without distinction, to be a valid and binding election to waive the carryback for both regular and AMT NOLs. This decision underscores the indivisibility of NOL and AMT NOL elections and emphasizes the importance of clear and unambiguous language in tax elections.

Facts

Bradley and Dianne Miller reported a net operating loss (NOL) of $331,958 and an alternative minimum tax (AMT) NOL of $156,014 for the tax year 1985. On their 1985 tax return, they elected to forego the carryback period for their NOLs, stating, "In accordance with Internal Revenue Code Section 172, the Taxpayers hereby elect to forego the net operating loss carry back period and will carryforward the net operating loss. " Subsequently, they filed an amended 1984 return seeking to carry back the AMT NOL, claiming a refund. The Commissioner of Internal Revenue challenged this, asserting that the election to waive the carryback period applied to both types of NOLs.

Procedural History

The Millers filed a petition with the U. S. Tax Court after receiving a notice of deficiency from the Commissioner of Internal Revenue. The Tax Court reviewed the case and issued its opinion on March 20, 1995, affirming the indivisibility of the NOL and AMT NOL elections.

Issue(s)

1. Whether NOLs and AMT NOLs from the same tax year can be carried to different tax years.
2. Whether the Millers' election to forego the NOL carryback period was valid and binding for both types of NOLs.
3. Whether the Millers' election language created ambiguity regarding their intent to split the NOL and AMT NOL carrybacks.

Holding

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1. No, because section 172(b)(3)(C) of the Internal Revenue Code does not permit separate treatment of NOLs and AMT NOLs from the same tax year.
2. Yes, because the Millers' election statement clearly manifested an intent to waive the carryback period for all NOLs as per the statute's language.
3. No, because the term "net operating loss" used in the election statement was not ambiguous and did not indicate an intent to split the NOL and AMT NOL carrybacks.

Court's Reasoning

The court relied on the statutory language of section 172(b)(3)(C), which does not distinguish between regular and AMT NOLs. It cited Plumb v. Commissioner, 97 T. C. 632 (1991), which established that a single election under this section applies to both types of losses. The court analyzed the Millers' election statement, noting that the term "net operating loss" without any qualifier (such as "regular") did not create ambiguity. The court emphasized that an election must be unequivocal and that the Millers' use of the statutory language indicated a valid election to waive the carryback for both types of NOLs. The court also considered subsequent legislative and administrative guidance, such as a 1986 House report and Rev. Rul. 87-44, which supported the indivisibility of NOL elections. The court rejected the Millers' argument that their election was invalid due to an attempt to split the NOLs, finding that their election was clear and binding.

Practical Implications

This decision clarifies that taxpayers cannot split NOL and AMT NOL carrybacks from the same tax year, requiring a single election to apply to both. Practitioners must ensure that election statements are clear and use the precise language of the relevant statute to avoid ambiguity. This ruling impacts tax planning strategies, particularly in years where taxpayers might have both types of losses, as they must consider the indivisible nature of the carryback election. Subsequent cases, such as Powers v. Commissioner, 43 F. 3d 172 (5th Cir. 1995), and Branum v. Commissioner, 17 F. 3d 805 (5th Cir. 1994), have reinforced the principles established in Miller, emphasizing the importance of unambiguous election language. This case serves as a reminder to taxpayers and their advisors of the need for careful drafting of tax elections and the potential consequences of attempting to benefit from ambiguous language.

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