Robert T. Cozean v. Commissioner of Internal Revenue, 109 T. C. 227 (1997)

The statutory cap on attorney fees under section 7430(c)(1)(B)(iii) of the Internal Revenue Code applies to fees for accountants authorized to practice before the IRS, absent special factors justifying a higher rate.

Summary

Robert T. Cozean sought litigation costs, including attorney and accountant fees, after the IRS conceded tax deficiencies for 1990-1992. The key issue was whether the $75 per hour statutory cap (adjusted for inflation) on attorney fees under section 7430(c)(1)(B)(iii) applied to the fees claimed. The Tax Court held that the cap applied to both attorney and accountant fees, as accountants authorized to practice before the IRS are treated as attorneys under the statute. No special factors justified exceeding the cap, resulting in an award of $6,656 for legal fees and $5,698 for accountant fees at the adjusted rate.

Facts

Robert T. Cozean received a notice of deficiency from the IRS for tax years 1990-1992, alleging unreported income and disallowed losses. After the IRS conceded the deficiencies before trial, Cozean sought litigation costs, including $250 per hour for attorney Edward D. Urquhart and fees for accountants Victor E. Harris and Pamela Zimmerman at rates between $90 and $175 per hour. The IRS conceded Cozean's entitlement to costs but disputed the claimed amounts, arguing they exceeded the statutory cap.

Procedural History

Cozean filed a timely petition in the U. S. Tax Court after receiving the notice of deficiency. The IRS conceded the deficiencies before trial, and the case was settled. Cozean then filed a motion for litigation costs, which the court considered based on the submitted affidavits and pleadings.

Issue(s)

1. Whether the statutory cap on attorney fees under section 7430(c)(1)(B)(iii) applies to the attorney fees claimed by Cozean.
2. Whether the same statutory cap applies to the accountant fees claimed by Cozean.

Holding

1. Yes, because the statutory cap applies to attorney fees, and Cozean failed to establish any special factors justifying a higher rate.
2. Yes, because section 7430(c)(3) treats fees for accountants authorized to practice before the IRS as attorney fees, subjecting them to the same statutory cap.

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Court’s Reasoning

The court applied the statutory rule in section 7430(c)(1)(B)(iii) limiting attorney fees to $75 per hour (adjusted for inflation) unless special factors justify a higher rate. It rejected Cozean’s argument that the complexity of the tax issues and the prevailing market rates constituted special factors, citing *Pierce v. Underwood* and *Powers v. Commissioner*. The court noted that expertise in tax law does not qualify as a special factor. For accountant fees, the court applied section 7430(c)(3), which treats such fees as attorney fees, subjecting them to the same cap. No special factors were shown to justify exceeding the cap for either the attorney or accountant fees.

Practical Implications

This decision clarifies that the statutory cap on attorney fees under section 7430 applies to both attorneys and accountants authorized to practice before the IRS, absent special factors. Practitioners must carefully document any special factors to justify higher fee awards. This ruling may affect the willingness of attorneys and accountants to take on tax litigation cases at potentially lower compensation rates, impacting the availability of legal representation in tax disputes. Future cases involving similar claims for litigation costs will need to adhere to this interpretation of the statutory cap, unless Congress amends the law or the IRS adjusts its regulations.

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