Cozean v. Commissioner, 109 T. C. No. 10 (1997)

The statutory cap on attorney fees in tax litigation under section 7430(c)(1)(B)(iii) applies equally to accountants authorized to practice before the IRS.

Summary

In Cozean v. Commissioner, the Tax Court addressed the limits on recoverable attorney and accountant fees under section 7430 of the Internal Revenue Code. The petitioner sought litigation costs after the IRS conceded deficiencies, requesting attorney fees at $250 per hour and accountant fees at various rates. The court held that no special factors justified exceeding the statutory cap of $75 per hour (adjusted for inflation) for attorneys, and this cap also applied to accountants authorized to practice before the IRS. The decision clarifies that expertise in tax law does not constitute a special factor for fee enhancement and underscores the broad application of the statutory fee limit.

Facts

Robert T. Cozean filed a timely claim for litigation costs after the IRS conceded deficiencies for tax years 1990-1992. He sought attorney's fees at $250 per hour for 64 hours of service by Edward D. Urquhart, and accountant fees for services by Victor E. Harris at rates of $170 and $175 per hour, and Pamela Zimmerman at $90 and $92 per hour. The IRS conceded the entitlement to litigation costs but contested the amounts, arguing they exceeded the statutory cap under section 7430(c)(1)(B)(iii).

Procedural History

The case was assigned to the Tax Court's Chief Special Trial Judge following the IRS's notice of deficiency and subsequent concession of all deficiencies before trial. Cozean filed a motion for litigation costs, which the court decided based on the motion, IRS's objection, Cozean's reply, and affidavits, without a hearing.

Issue(s)

1. Whether a special factor existed justifying an award of attorney's fees in excess of the $75 statutory cap (adjusted for inflation).
2. Whether the statutory cap on attorney's fees applies to fees claimed for services of accountants authorized to practice before the IRS.

Holding

1. No, because the petitioner failed to establish any special factor beyond general tax law expertise, which does not justify exceeding the statutory cap.
2. Yes, because section 7430(c)(3) treats fees of individuals 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 relied on the Supreme Court’s decision in Pierce v. Underwood, which clarified that only nonlegal or technical abilities beyond general legal knowledge constitute special factors for exceeding the statutory fee cap. The court rejected the argument that the complexity of tax issues or the limited availability of tax attorneys warranted a higher fee. For accountants, the court applied section 7430(c)(3), which equates their fees with those of attorneys when they are authorized to practice before the IRS. The court emphasized that no special factor was shown to justify exceeding the cap for either the attorney or the accountants.

Practical Implications

This decision impacts how attorneys and accountants can recover fees in tax litigation. Practitioners must understand that general expertise in tax law does not justify fee awards above the statutory cap. The ruling also broadens the cap’s application to include accountants authorized to practice before the IRS, potentially affecting their fee structures in tax disputes. This may encourage more careful consideration of fee agreements and the need to demonstrate true special factors for fee enhancement. Subsequent cases have continued to apply these principles, reinforcing the strict interpretation of the statutory cap on fees.

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