T.C. Memo. 1999-200

The statute of limitations for assessing income tax deficiencies remains open indefinitely when a taxpayer fails to file a required tax return, even if tax was initially withheld at source and later refunded.

Summary

ICI Pension Fund, a foreign trust, received dividend income from U.S. corporations, and U.S. taxes were withheld at source. The Fund filed Form 990-T refund claims, asserting tax-exempt status and seeking refunds of the withheld taxes, which the IRS granted. The Fund did not file a U.S. income tax return (Form 1040NR). The IRS later determined the Fund was not tax-exempt and issued notices of deficiency beyond the typical 3-year statute of limitations. The Tax Court held that because the Fund did not file a required income tax return, the statute of limitations remained open under Section 6501(c)(3), allowing the IRS to assess tax at any time. The court rejected the Fund's arguments that Form 1042 filed by the withholding agent or Form 990-T refund claims started the statute of limitations.

Facts

ICI Pension Fund (the Fund) is a trust based in the United Kingdom.

The Fund received dividend income from U.S. corporations in 1991 and 1992.

Banker's Trust Co., the withholding agent, withheld U.S. income tax from these dividends and remitted it to the IRS.

Banker's Trust filed Form 1042 and Form 1042S for 1991 and 1992, which did not include the Fund's taxpayer identification number or signature.

The Fund filed Form 990-T for 1991 and 1992, claiming tax-exempt status and seeking refunds of the withheld taxes.

The IRS refunded the withheld amounts to the Fund.

The Fund did not file a U.S. income tax return (Form 1040NR) for either year.

The IRS later determined the Fund was not tax-exempt and issued notices of deficiency in December 1996 for 1991 and 1992.

Procedural History

The IRS issued notices of deficiency to ICI Pension Fund for the 1991 and 1992 tax years.

ICI Pension Fund petitioned the Tax Court, arguing the notices were untimely due to the statute of limitations.

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Both the Fund and the IRS moved for summary judgment on the statute of limitations issue.

The Tax Court granted the IRS's motion for partial summary judgment and denied the Fund's motion.

Issue(s)

1. Whether the notices of deficiency for 1991 and 1992 were timely under the statute of limitations in Section 6501, given that the Fund did not file income tax returns but taxes were withheld and Form 1042 was filed by the withholding agent.

2. Whether the Form 1042 filed by Banker's Trust, the withholding agent, constituted the Fund's tax return for purposes of starting the statute of limitations under Section 6501(a).

Holding

1. No. The notices of deficiency were timely because the Fund failed to file a required income tax return, and therefore, under Section 6501(c)(3), there is no statute of limitations on assessment.

2. No. Form 1042 filed by the withholding agent is not the taxpayer's return and does not start the statute of limitations for the taxpayer.

Court's Reasoning

The court relied on the plain language of Section 6501, which provides a 3-year statute of limitations after a return is filed but removes the limitation when no return is filed.

The court found that the Fund was required to file an income tax return because, despite initial tax withholding, it claimed and received refunds, thus its tax liability was not "fully satisfied by the withholding of tax at source" as per Treasury Regulation § 1.6012-1(b)(2)(i).

The court stated, "Although the fund states correctly that the fund did satisfy this requirement at one time, the fund ceased to meet this requirement when it requested and received a refund of the withheld tax. The fact that the fund claimed a refund of these withheld amounts also removed it from the regulatory exception. Section 1.6012 — l(b)(2)(i), Income Tax Regs., states specifically that that exception is not applicable where, as is the case here, the taxpayer claims a refund of an overpaid tax."

The court rejected the argument that Form 1042 filed by Banker's Trust started the statute of limitations for the Fund. The court reasoned that Form 1042 is not the taxpayer's return. Citing Beard v. Commissioner, 82 T.C. 766 (1984), the court

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reiterated the requirements for a document to be considered a tax return for statute of limitations purposes: (1) it must purport to be a return, (2) it must be an honest and reasonable attempt to comply with tax law, (3) it must contain sufficient information to calculate tax liability, and (4) it must be signed under penalties of perjury by the taxpayer.

The court noted Form 1042 failed these requirements as it did not contain sufficient information to determine the Fund's tax liability and was not signed by the Fund.

Practical Implications

This case clarifies that even when tax is withheld at source, a taxpayer must still file an income tax return if required, especially if they seek a refund of withheld taxes. Failure to file a required return keeps the statute of limitations open indefinitely, allowing the IRS to assess tax deficiencies at any future time.

Legal practitioners should advise clients, particularly foreign entities receiving U.S. source income, to file appropriate U.S. income tax returns even if withholding occurred, especially if they are claiming treaty benefits or exemptions or seeking refunds. Filing refund claims (like Form 990-T in this case, though not an income tax return itself) triggers a filing requirement for a proper income tax return if the taxpayer wishes to benefit from the statute of limitations.

This case reinforces the principle that information returns filed by third parties (like Form 1042) do not substitute for the taxpayer's own return in starting the statute of limitations period.

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