Pekar v. Commissioner, 113 T. C. 158 (1999)

U. S. tax treaties with Germany and the United Kingdom do not override the limitation on the foreign tax credit for alternative minimum tax purposes under IRC section 59.

Summary

Paul J. Pekar, a U. S. citizen living abroad, claimed a full foreign tax credit against his U. S. tax liability, reducing it to zero, but did not report liability for the alternative minimum tax (AMT). The U. S. Tax Court held that the U. S. -Germany and U. S. -U. K. tax treaties did not supersede the IRC section 59 limitation on the foreign tax credit for AMT purposes. The court also found Pekar negligent for failing to report AMT and upheld a late-filing penalty, emphasizing the application of the 'last-in-time' rule where subsequent statutory provisions override conflicting treaty terms.

Facts

Paul J. Pekar, a U. S. citizen, resided in Germany and the United Kingdom during 1995. He earned income in both countries and paid resident income taxes, which he used to claim a foreign tax credit against his U. S. tax liability, reducing it to zero. Pekar did not report or calculate liability for the alternative minimum tax (AMT), despite having previously conceded AMT liability for 1991 after an IRS audit. He argued that the AMT and its limitation on foreign tax credits violated the double taxation protections in U. S. tax treaties with Germany and the United Kingdom.

Procedural History

The Commissioner of Internal Revenue audited Pekar's 1995 tax return and determined a deficiency in AMT, a negligence penalty, and a late-filing addition to tax. Pekar challenged these determinations in the U. S. Tax Court, which upheld the Commissioner's findings on all counts.

Issue(s)

1. Whether the U. S. -Germany and U. S. -U. K. tax treaties override the IRC section 59 limitation on the foreign tax credit for AMT purposes.
2. Whether Pekar was negligent in failing to calculate and report AMT on his 1995 tax return.
3. Whether Pekar was liable for a late-filing addition to tax for his 1995 return.

Holding

1. No, because the treaties do not conflict with the IRC section 59 limitation, and even if there were a conflict, the 'last-in-time' rule would apply, giving precedence to the later-enacted IRC provision.

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2. Yes, because Pekar had knowledge of the AMT from a prior audit and lacked reasonable cause for failing to report it.
3. Yes, because Pekar's return was not considered timely filed under the rules applicable to foreign postmarks, and he failed to show reasonable reliance on professional advice.

Court's Reasoning

The court applied the 'last-in-time' rule, stating that if there is a conflict between a Code provision and a treaty, the later-enacted provision prevails. The court found no conflict between the treaties and IRC section 59, as both the U. S. -Germany and U. S. -U. K. treaties explicitly allowed for the application of U. S. law limitations on foreign tax credits. The court cited previous decisions like Lindsey v. Commissioner to support its reasoning. Regarding negligence, the court emphasized Pekar's prior knowledge of AMT and his failure to disclose his position, which contributed to the finding of negligence. On the late-filing issue, the court applied the rule that foreign postmarks do not count as timely filing under IRC section 7502, and Pekar failed to demonstrate reasonable reliance on advice regarding foreign postmarks.

Practical Implications

This decision clarifies that U. S. tax treaties do not supersede domestic tax laws limiting foreign tax credits for AMT purposes, reinforcing the importance of calculating and reporting AMT for U. S. citizens abroad. Practitioners should advise clients to carefully review AMT calculations and consider the limitations on foreign tax credits. The case also highlights the need for accurate reporting and timely filing, especially when relying on extensions for U. S. citizens living abroad. Subsequent cases like Jamieson v. Commissioner have applied similar principles in the context of AMT and treaty provisions.

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