Nestor v. Commissioner, 118 T. C. 162 (United States Tax Court, 2002)

In Nestor v. Commissioner, the U. S. Tax Court ruled that Michael E. Nestor could not challenge his tax liability for the years 1992-1997 at a Collection Due Process (CDP) hearing because he had previously received notices of deficiency for those years. The court upheld the IRS's decision to proceed with collection, finding no abuse of discretion. This decision clarifies the scope of issues taxpayers can contest in CDP hearings, emphasizing that underlying tax liabilities cannot be disputed if notices of deficiency were properly issued and received.

Parties

Michael E. Nestor, the petitioner, represented himself pro se throughout the proceedings. The respondent, the Commissioner of Internal Revenue, was represented by David C. Holtz. The case originated in the United States Tax Court and was designated as No. 5372-00L.

Facts

Michael E. Nestor filed purported Federal income tax returns for the years 1990 through 1996 in May 1997 and timely filed a return for 1997 on April 15, 1998. In each return, he reported no wages, other income, or tax liability. The IRS assessed a frivolous return penalty under section 6702 for these years and issued notices of deficiency to Nestor for each year from 1990 to 1997. Nestor received the notices for 1992 through 1997 but did not file a petition for redetermination with the Tax Court for those years. Subsequently, the IRS issued a Notice of Intent to Levy on October 21, 1999, for the years 1990 through 1997. Nestor requested a Collection Due Process (CDP) hearing, which took place on December 28, 1999. At the hearing, he was not allowed to challenge his underlying tax liability for any of the years in question. After the hearing, the IRS sent Nestor a Notice of Determination on April 7, 2000, stating that collection of his tax liability for 1990 through 1997 would proceed.

Procedural History

The IRS issued notices of deficiency to Nestor for the tax years 1990 through 1997. Nestor received the notices for 1992 through 1997 but did not file a petition for redetermination with the Tax Court for those years. On October 21, 1999, the IRS issued a Notice of Intent to Levy to Nestor. In response, Nestor filed a Request for a Collection Due Process Hearing on November 17, 1999. The CDP hearing was held on December 28, 1999, after which the IRS issued a Notice of Determination on April 7, 2000, stating that all applicable laws and administrative procedures had been met and that collection of Nestor's tax liability for 1990 through 1997 would proceed. Nestor filed a petition for lien or levy action under section 6320(c) or 6330(d) on May 8, 2000. The Tax Court reviewed the case under the abuse of discretion standard.

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Issue(s)

Whether Nestor may contest his underlying tax liability for tax years 1992-1997 at the Collection Due Process hearing?

Whether the IRS's determination to proceed with collection with respect to Nestor's tax years 1992-1997 was an abuse of discretion?

Rule(s) of Law

Section 6330(c)(2)(B) of the Internal Revenue Code allows a taxpayer to contest the underlying tax liability at a CDP hearing only if the taxpayer did not receive a notice of deficiency or did not otherwise have an opportunity to dispute such tax liability. Section 6330(c)(1) requires the Appeals officer to obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met. Section 6203 mandates that upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of assessment.

Holding

The Tax Court held that Nestor could not contest his underlying tax liability for the years 1992 through 1997 at the CDP hearing because he had received notices of deficiency for those years. The court further held that the IRS's determination to proceed with collection for those years was not an abuse of discretion.

Reasoning

The court's reasoning focused on the statutory framework of section 6330 and its interplay with section 6203. The court emphasized that section 6330(c)(2)(B) precludes a taxpayer from contesting the underlying tax liability at a CDP hearing if the taxpayer received a notice of deficiency, as Nestor did for the years 1992 through 1997. The court rejected Nestor's argument that he was entitled to contest his liability because the notices of deficiency were invalid, citing the delegation of authority from the Secretary to the Director of the Service Center as sufficient under sections 6212(a), 7701(a)(11)(B), and 7701(12)(A)(i).

The court also addressed the verification requirement under section 6330(c)(1), noting that while the Appeals officer must verify compliance with applicable laws and procedures, this does not entail providing the taxpayer with a copy of the verification. The court held that the use of Form 4340, Certificate of Assessments and Payments, by the Appeals officer was sufficient to meet this requirement, as established in Davis v. Commissioner, 115 T. C. 35 (2000). The court found that the IRS's failure to provide Nestor with a copy of the assessment record at or before the hearing did not prejudice him, as he received the forms before the trial and did not show any irregularity in the assessment procedure.

The court also considered policy implications, noting that requiring the Appeals

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officer to provide a second copy of the assessment record would unnecessarily delay the case. The court dismissed Nestor's other arguments as frivolous, including his contention that the notice of intent to levy should identify specific Code sections and his claim that the IRS could not assess tax because of self-assessment under section 6201.

The court also addressed the concurring and dissenting opinions. The concurring opinions emphasized that the Appeals officer's use of Form 4340 was adequate under the law and that any error in not providing the assessment record earlier was harmless. The dissenting opinion argued that the IRS's failure to provide the assessment record at the hearing was a violation of section 6203 and thus the verification under section 6330(c)(1) was erroneous, warranting a remand for a new hearing.

Disposition

The Tax Court affirmed the IRS's determination to proceed with collection for the tax years 1992 through 1997 and issued an appropriate order.

Significance/Impact

Nestor v. Commissioner is significant for clarifying the scope of issues that can be contested at a CDP hearing under section 6330. The decision underscores that taxpayers cannot use CDP hearings to challenge underlying tax liabilities if they have received notices of deficiency and had the opportunity to contest those liabilities through the deficiency procedures. The case also reinforces the IRS's discretion in collection actions and the limited nature of judicial review in such cases, focusing on whether the IRS abused its discretion rather than re-litigating the underlying tax liability.

The ruling has practical implications for legal practitioners, emphasizing the importance of timely responding to notices of deficiency to preserve the right to contest underlying tax liabilities. It also highlights the importance of the IRS's compliance with verification requirements under section 6330(c)(1), although the court found that non-compliance with section 6203 did not prejudice Nestor's case. Subsequent courts have cited Nestor in cases involving similar issues, solidifying its doctrinal importance in the realm of tax collection due process.

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