Behling v. Commissioner of Internal Revenue, 118 T. C. 572 (U. S. Tax Court 2002)

In Behling v. Commissioner, the U. S. Tax Court upheld the statutory bar preventing Harold F. Behling from challenging the amount of his tax liability during a Collection Due Process (CDP) hearing, since he had previously received a notice of deficiency and failed to file a timely petition. The court emphasized that the IRS's consideration of the liability during the hearing did not waive the statutory restriction under Section 6330(c)(2)(B) of the Internal Revenue Code. This decision reinforces the limitations on judicial review in CDP proceedings, impacting how taxpayers can contest tax liabilities post-notice of deficiency.

Parties

Harold F. Behling, Petitioner, pro se, versus Commissioner of Internal Revenue, Respondent, represented by Pamela J. Sewell, Sheara L. Gelman, and Alan Levine.

Facts

On March 17, 1997, the IRS issued a notice of deficiency to Harold F. Behling and his wife, determining a deficiency in their 1993 federal income tax based on the disallowance of a flow-through loss from Behling Automotive, Inc. , an S corporation, due to Behling's exhausted basis. Behling acknowledged receipt of the notice and sought further explanation, but he did not file a petition for redetermination by the June 17, 1997 deadline. Consequently, the IRS assessed the deficiency on August 1, 1997. On August 28, 2000, the IRS filed a notice of federal tax lien against Behling, followed by a notice of lien filing and the right to a hearing under IRC Section 6320. Behling requested a Collection Due Process (CDP) hearing, which took place on January 17, 2001. During the hearing, the Appeals officer considered Behling's claim of sufficient basis in the S corporation to cover the loss. Despite a recommendation for abatement, the supervisor rejected it, and the notice of determination issued on March 15, 2001, denied withdrawal of the lien due to Behling's failure to substantiate his basis. Behling then filed a petition with the Tax Court challenging the existence and amount of his 1993 tax liability.

Procedural History

The IRS issued a notice of deficiency on March 17, 1997, which Behling acknowledged on March 24, 1997, without filing a timely petition. The deficiency was assessed on August 1, 1997. After the IRS filed a notice of federal tax lien on August 28, 2000, and issued a notice of lien filing, Behling requested a CDP hearing. The hearing occurred on January 17, 2001, and the Appeals officer considered Behling's underlying tax liability. The IRS issued a notice of determination on March 15, 2001, denying withdrawal of the lien. Behling filed an imperfect petition with the Tax Court, later amended to challenge the tax liability, leading to the IRS's motion for summary judgment, which was granted by the Tax Court.

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Issue(s)

Whether a taxpayer who received a notice of deficiency and had an opportunity to dispute the tax liability but failed to do so is statutorily barred under Section 6330(c)(2)(B) of the Internal Revenue Code from challenging the existence or amount of that liability in a subsequent Collection Due Process hearing.

Rule(s) of Law

Section 6330(c)(2)(B) of the Internal Revenue Code states that the existence or amount of the underlying tax liability can be contested at an Appeals Office hearing only if the person did not receive a notice of deficiency or did not otherwise have an earlier opportunity to dispute such tax liability. Section 301. 6320-1(e)(3), Q& A-E11, Proced. & Admin. Regs. , clarifies that an Appeals officer's consideration of the underlying tax liability during a CDP hearing does not waive the statutory bar if the taxpayer had a prior opportunity to dispute the liability.

Holding

The U. S. Tax Court held that Behling was statutorily barred under Section 6330(c)(2)(B) from challenging the existence or amount of his 1993 tax liability in the CDP proceeding because he had received a notice of deficiency and had an opportunity to dispute it but failed to file a timely petition.

Reasoning

The court reasoned that the statutory language of Section 6330(c)(2)(B) clearly prohibits a taxpayer from contesting the underlying tax liability in a CDP hearing if they had previously received a notice of deficiency and had an opportunity to dispute it. The court further noted that the IRS's consideration of Behling's liability at the CDP hearing did not constitute a waiver of the statutory bar, as supported by Section 301. 6320-1(e)(3), Q& A-E11, Proced. & Admin. Regs. , which is consistent with the statute. The court emphasized that allowing the Appeals officer to consider the liability in such circumstances was a "taxpayer-friendly" approach but did not extend to judicial review. The court rejected Behling's attempt to challenge the liability based on his failure to substantiate his basis in the S corporation, finding no valid issue for judicial review under the CDP procedures.

Disposition

The U. S. Tax Court granted the Commissioner's motion for summary judgment, sustaining the notice of determination dated March 15, 2001, and entered a decision for the respondent.

Significance/Impact

Behling v. Commissioner reinforces the strict application of Section 6330(c)(2)(B),

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which limits the scope of judicial review in CDP proceedings to issues other than the underlying tax liability if the taxpayer had a prior opportunity to dispute it. This decision underscores the importance of timely filing a petition in response to a notice of deficiency, as failure to do so precludes later challenges to the liability in CDP hearings. The case also validates the IRS's regulation under Section 301. 6320-1(e)(3), Q& A-E11, as a reasonable interpretation of the statute. This ruling has significant implications for taxpayers and practitioners, emphasizing the need to address tax liabilities at the earliest possible stage to preserve rights to judicial review.

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