Joseph M. Grey Public Accountant, P. C. v. Commissioner, 119 T. C. 121 (2002)

In Joseph M. Grey Public Accountant, P. C. v. Commissioner, the U. S. Tax Court ruled that Joseph Grey, the sole shareholder and president of an S corporation, was an employee for federal employment tax purposes. The court rejected the corporation's claim for relief under Section 530 of the Revenue Act of 1978, which is limited to common law employee classification disputes and does not apply to statutory employees like corporate officers. This decision clarifies the employment status of corporate officers and the scope of Section 530 relief.

Parties

Joseph M. Grey Public Accountant, P. C. (Petitioner) v. Commissioner of Internal Revenue (Respondent). Joseph Grey, the president and sole shareholder of the petitioner, represented the corporation in the proceedings.

Facts

Joseph M. Grey Public Accountant, P. C. , a Pennsylvania professional corporation and an S corporation, was organized on April 11, 1991, and operated as an accounting, bookkeeping, and tax preparation firm. Joseph Grey, the sole shareholder and president, performed numerous services for the corporation, including soliciting business, ordering supplies, entering into agreements, overseeing finances, collecting monies, managing the corporation, purchasing supplies, obtaining clients, maintaining customer satisfaction, and performing all bookkeeping and tax preparation services for the corporation's clients. The corporation rented part of Grey's personal residence for use as an office. During 1995 and 1996, the periods at issue, Grey took money from the corporation's account as needed, and the corporation did not make regular payments to him. The corporation reported Grey's income on Forms 1099-MISC, treating him as an independent contractor.

Procedural History

On February 23, 2000, the Commissioner issued a Notice of Determination Concerning Worker Classification under Section 7436, determining that Grey was an employee for federal employment tax purposes and that the corporation was not entitled to Section 530 relief. The corporation timely filed a petition for review on May 1, 2000, and an amended petition on July 24, 2000. The case was submitted fully stipulated under Tax Court Rule 122. The Tax Court's standard of review was de novo.

Issue(s)

Whether Joseph Grey was an employee of Joseph M. Grey Public Accountant, P. C. for federal employment tax purposes under Section 3121(d)(1) of the Internal

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Revenue Code?

Whether Joseph M. Grey Public Accountant, P. C. was entitled to relief under Section 530 of the Revenue Act of 1978?

Rule(s) of Law

Section 3121(d)(1) of the Internal Revenue Code defines “employee” to include “any officer of a corporation. ” Section 31. 3121(d)-1(b) of the Employment Tax Regulations states that “generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is considered not to be an employee of the corporation. “

Section 530 of the Revenue Act of 1978 provides relief from federal employment taxes if a taxpayer did not treat an individual as an employee, consistently reported the individual as not being an employee on all federal tax returns, and had a reasonable basis for such treatment.

Holding

The Tax Court held that Joseph Grey was an employee of Joseph M. Grey Public Accountant, P. C. for federal employment tax purposes under Section 3121(d)(1) because he was an officer who performed numerous services for the corporation. The court further held that the corporation was not entitled to relief under Section 530 because it had no reasonable basis for not treating Grey as an employee and because Section 530 relief is limited to common law employee classification disputes and does not apply to statutory employees like corporate officers.

Reasoning

The court’s reasoning was based on a straightforward application of Section 3121(d)(1) and the Employment Tax Regulations, which classify corporate officers as employees unless they perform only minor services and receive no remuneration. The court rejected the corporation’s argument that Grey’s employment status should be determined under common law factors, citing the statutory and regulatory framework that classifies corporate officers as employees. The court also found that the corporation had no reasonable basis for not treating Grey as an employee, as it could not rely on common law factors to classify a statutory employee as an independent contractor. Furthermore, the court interpreted Section 530 to apply only to common law employee classification disputes, not to statutory employees, based on the statutory language, legislative history, and subsequent amendments. The court concluded that the corporation was liable for federal employment taxes as set forth in the Commissioner’s notice.

Disposition

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The Tax Court entered judgment for the Commissioner and in accordance with the parties' stipulations as to amounts.

Significance/Impact

This case clarifies that corporate officers are statutory employees for federal employment tax purposes, subject to the exceptions in the Employment Tax Regulations, and that Section 530 relief is not available for the misclassification of statutory employees. The decision reinforces the importance of proper classification of corporate officers and the limitations of Section 530 relief, which is intended to address common law employee classification disputes. The case has practical implications for S corporations and other entities that may attempt to avoid employment taxes by misclassifying corporate officers as independent contractors.

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