Clough v. Commissioner of Internal Revenue, 119 T. C. 183 (2002), United States Tax Court, 2002.

In Clough v. Comm'r, the U. S. Tax Court dismissed a petition for lack of jurisdiction because it was filed late. The court determined that the notice of deficiency was mailed on December 4, 2001, and the 90-day filing period expired before the petition was mailed. The court admitted the IRS's certified mail list as evidence of mailing under the Federal Rules of Evidence, overruling the taxpayer's hearsay objections. This ruling clarifies the use of certified mail lists in proving the timeliness of deficiency notices and impacts how taxpayers and the IRS handle jurisdictional disputes.

Parties

Stanley D. Clough and Rosemary A. Clough (Petitioners) v. Commissioner of Internal Revenue (Respondent).

Facts

The Internal Revenue Service (IRS) issued a notice of deficiency to Stanley D. Clough and Rosemary A. Clough on December 4, 2001, determining a deficiency in their 1999 federal income tax and an accuracy-related penalty. The notice was sent to the Cloughs' address in Sylmar, California. The Cloughs received the notice on or about December 28, 2001. The notice specified that the last day to file a petition with the Tax Court was March 4, 2002. The Cloughs mailed their petition to the Tax Court, which was postmarked March 21, 2002, and received by the court on April 1, 2002.

The IRS filed a motion to dismiss for lack of jurisdiction, asserting that the petition was untimely because it was not filed within the 90-day period following the mailing of the notice of deficiency. The IRS provided a certified mail list as evidence, which indicated that the notice was mailed on December 4, 2001. The Cloughs objected to the admissibility of the certified mail list, arguing that it constituted inadmissible hearsay.

Procedural History

The IRS filed a motion to dismiss for lack of jurisdiction on the ground that the petition was not filed within the time prescribed in 26 U. S. C. § 6213(a) and § 7502(a). The Tax Court held hearings on the motion in Washington, D. C. , on June 19, 2002, and in San Diego, California, on June 28, 2002. The IRS supplemented its motion with declarations from Susan D. Petersen, a manager at the Ogden Service Center, and Greg L. Holt, a U. S. Postal Service mail processing clerk, to authenticate the certified mail list. The Cloughs objected to the introduction of these documents into evidence on the grounds of hearsay. The Tax Court granted the IRS's motion to dismiss for lack of jurisdiction.

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Issue(s)

Whether the Tax Court has jurisdiction over the Cloughs' petition, given that the petition was filed more than 90 days after the notice of deficiency was mailed, as evidenced by the IRS's certified mail list.

Whether the certified mail list and accompanying declarations are admissible under the Federal Rules of Evidence as an exception to the hearsay rule.

Rule(s) of Law

26 U. S. C. § 6213(a) provides that a taxpayer has 90 days from the date the notice of deficiency is mailed to file a petition with the Tax Court for a redetermination of the deficiency.

Fed. R. Evid. 803(6) allows for the admission of records of regularly conducted activity as an exception to the hearsay rule, provided that the record was made at or near the time by, or from information transmitted by, a person with knowledge, and kept in the course of a regularly conducted business activity.

Fed. R. Evid. 902(11) permits the self-authentication of domestic records of regularly conducted activity if accompanied by a written declaration of its custodian or other qualified person certifying that the record meets the requirements of Rule 803(6).

Holding

The Tax Court held that it lacked jurisdiction over the Cloughs' petition because it was not filed within the 90-day period prescribed by 26 U. S. C. § 6213(a). The court found that the notice of deficiency was mailed on December 4, 2001, as evidenced by the IRS's certified mail list, and thus the petition, which was postmarked March 21, 2002, was untimely.

The court also held that the certified mail list and the accompanying declarations were admissible under Fed. R. Evid. 803(6) and 902(11) as records of regularly conducted activity and self-authenticating documents, respectively.

Reasoning

The court's reasoning focused on the admissibility of the certified mail list under the Federal Rules of Evidence. The court found that the certified mail list was a record of regularly conducted activity under Rule 803(6) because it was prepared and retained by the IRS in the normal course of operations. The court rejected the Cloughs' argument that the certified mail list was prepared in anticipation of litigation, finding instead that it was a necessary record for determining the dates of issuance of notices of deficiency.

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The court also found that the declarations by Susan D. Petersen and Greg L. Holt were sufficient to self-authenticate the certified mail list under Rule 902(11). These declarations established that the certified mail list was prepared and retained in the normal course of operations and that the postmark stamp was placed on the list by a U. S. Postal Service mail processing clerk consistent with normal practices.

The court considered the Cloughs' objections to the hearsay nature of the certified mail list and declarations but found no evidence of unreliability. The court emphasized that the IRS had produced competent and persuasive evidence of the mailing date of the notice of deficiency, and the Cloughs had not presented any evidence to the contrary.

The court's decision to dismiss the petition for lack of jurisdiction was based on the finding that the petition was not filed within the statutory 90-day period, as the notice of deficiency was mailed on December 4, 2001.

Disposition

The Tax Court granted the IRS's motion to dismiss for lack of jurisdiction, as supplemented, and dismissed the case.

Significance/Impact

Clough v. Comm'r is significant for its clarification of the admissibility of certified mail lists as evidence of the mailing date of notices of deficiency. The decision underscores the importance of the Federal Rules of Evidence in Tax Court proceedings and the self-authentication provisions for records of regularly conducted activity.

The case also has practical implications for taxpayers and their attorneys, emphasizing the need to file petitions within the statutory 90-day period following the mailing of a notice of deficiency. The court's ruling on the hearsay exception for certified mail lists provides guidance on the evidentiary standards that the IRS must meet to prove the timeliness of deficiency notices.

Subsequent treatment of Clough v. Comm'r by other courts has reinforced the principles established in the case, particularly regarding the use of certified mail lists and the application of the Federal Rules of Evidence in jurisdictional disputes. The decision has been cited in cases involving similar issues of timeliness and admissibility of evidence in Tax Court proceedings.

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