Takaba v. Commissioner, 119 T. C. 285 (2002)

The U. S. Tax Court imposed a $15,000 penalty on Brian Takaba for advancing frivolous arguments against his 1996 tax liability and ordered his attorney, Paul Sulla, to pay $10,500 in excess costs for recklessly promoting these arguments. The case highlights the court's authority to sanction taxpayers and their counsel for maintaining groundless claims, emphasizing the legal obligation to file and pay federal income taxes on U. S. source income.

Parties

Brian G. Takaba, the petitioner, initially represented himself pro se before hiring attorney Paul J. Sulla, Jr. The respondent was the Commissioner of Internal Revenue. The case was heard in the U. S. Tax Court.

Facts

Brian Takaba, a U. S. citizen and resident of Hawaii, earned $29,251 in 1996 as compensation from Thunderbug, Inc. , a domestic corporation, and received $13 in interest from American Savings Bank. Takaba did not file a U. S. Individual Income Tax Return for 1996 nor make any estimated tax payments. He argued that he had no taxable income under the Internal Revenue Code (IRC), that filing was voluntary, and that the Form 1040 was invalid. Later, with attorney Sulla's representation, Takaba introduced the argument that his income was exempt under IRC § 861 and related regulations. The Commissioner determined a deficiency and additions to tax based on information from Takaba's employer and bank.

Procedural History

The Commissioner issued a notice of deficiency on December 21, 1998, determining a $3,407 deficiency in Takaba's 1996 income tax, along with additions to tax. Takaba filed a petition with the U. S. Tax Court on March 22, 1999, initially representing himself. Attorney Paul Sulla entered his appearance on June 21, 2000. The Commissioner moved for summary judgment and to award damages. On June 6, 2001, the court granted the motion for summary judgment, ordered Takaba and Sulla to show cause why sanctions should not be imposed under IRC § 6673, and set the case for a trial session. After further proceedings and arguments, the court issued its opinion on December 16, 2002, imposing sanctions on both Takaba and Sulla.

Issue(s)

1. Whether Brian Takaba must pay a penalty pursuant to IRC § 6673(a)(1) for advancing frivolous arguments against his 1996 tax liability?
2. Whether Paul Sulla must pay certain of the Commissioner's costs pursuant to IRC § 6673(a)(2) for recklessly promoting Takaba's frivolous arguments?

Rule(s) of Law

IRC § 6673(a)(1) allows the Tax Court to impose a penalty not exceeding $25,000 if a taxpayer's position in proceedings is frivolous or groundless. IRC § 6673(a)(2) permits the court to require an attorney to pay personally the excess costs, expenses, and attorneys' fees if they unreasonably and vexatiously multiply proceedings. A position is considered frivolous if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law. See *Coleman v. Commissioner*, 791 F. 2d 68, 71 (7th Cir. 1986).

Holding

The court held that Takaba's position was frivolous, justifying a $15,000 penalty under IRC § 6673(a)(1). It further held that Sulla's advocacy of Takaba's arguments was both knowing and reckless, thus unreasonably and vexatiously multiplying the proceedings, and ordered him to pay $10,500 in excess costs under IRC § 6673(a)(2).

Reasoning

The court rejected Takaba's arguments that his income was not taxable under IRC § 861 and associated regulations, stating that such arguments are contrary to established law. The court cited IRC § 1, which imposes an income tax on all income of U. S. citizens, including compensation for services and interest, and noted that the source rules of IRC §§ 861-865 do not exclude U. S. source income of U. S. citizens from taxation. The court found Takaba's position to be frivolous and unsupported by legal authority, warranting the penalty.

Regarding Sulla, the court determined that he knowingly maintained Takaba's initial frivolous arguments and recklessly introduced the § 861 argument, despite being warned by the court and provided with contradictory legal authority. The court found that Sulla's actions constituted bad faith, unreasonably and vexatiously multiplying the proceedings. The court calculated the excess costs based on the time spent by the Commissioner's attorneys after Sulla's involvement, applying the lodestar method to determine the appropriate sanction.

Disposition

The court imposed a $15,000 penalty on Takaba under IRC § 6673(a)(1) and ordered Sulla to pay $10,500 to the Commissioner under IRC § 6673(a)(2).

Significance/Impact

This case reinforces the authority of the Tax Court to sanction taxpayers and their attorneys for maintaining frivolous arguments, particularly those related to tax protester rhetoric. It underscores the legal obligation of U. S. citizens to report and pay taxes on U. S. source income and the potential consequences for attorneys who recklessly pursue such claims. The decision serves as a deterrent to frivolous tax litigation and highlights the importance of legal professionals adhering to established law and ethical standards in representing their clients.

