***Keene v. Commissioner, 119 T. C. 275 (2002)***

In a significant decision, the U. S. Tax Court ruled that taxpayers have the right to audio record their hearings with the IRS Appeals Office under Section 7521(a)(1). The case centered on taxpayer Keene's attempt to record his Collection Due Process (CDP) hearing, which the IRS had prohibited. The court found that such hearings constitute "in-person interviews" under the law, rejecting the IRS's distinction between interviews and hearings. This ruling enhances taxpayer rights by ensuring transparency in collection proceedings and aids judicial review of IRS determinations.

**Parties**

Plaintiff-Appellant: Robert N. Keene. Defendant-Appellee: Commissioner of Internal Revenue. Keene was the petitioner at the trial and appeal stages, while the Commissioner was the respondent throughout the litigation.

**Facts**

Robert N. Keene, a Las Vegas resident, filed a joint federal income tax return for the 1991 tax year with his spouse, reporting various income sources and a tax liability. After making partial payments, Keene filed for bankruptcy and later amended his return, claiming no tax was due based on frivolous arguments. In 2002, the IRS issued a Final Notice of Intent to Levy and a Notice of Right to a Hearing regarding the unpaid 1991 tax. Keene requested a CDP hearing and sought to audio record it. The IRS Appeals Office denied this request, citing a new policy against recording such hearings. Keene then left the scheduled hearing when not allowed to record and subsequently challenged the IRS's decision in the U. S. Tax Court.

**Procedural History**

The case was assigned to a Special Trial Judge, whose opinion the full Tax Court adopted. The IRS moved for summary judgment, arguing that Section 7521(a)(1) did not apply to CDP hearings. Keene opposed this motion, asserting his right to record under the statute. The Tax Court considered the motion without Keene's appearance but with his written opposition on file. The court ultimately denied the IRS's motion for summary judgment, holding that Keene was entitled to record his CDP hearing.

**Issue(s)**

Whether a taxpayer has the statutory right under Section 7521(a)(1) to audio record a Collection Due Process hearing with the IRS Appeals Office?

**Rule(s) of Law**

Section 7521(a)(1) of the Internal Revenue Code states that "Any officer or employee of the Internal Revenue Service in connection with any in-person interview

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with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment. "

**Holding**

The U. S. Tax Court held that a taxpayer is entitled to audio record a Collection Due Process hearing with the IRS Appeals Office under Section 7521(a)(1), as such a hearing constitutes an "in-person interview" relating to the collection of tax.

**Reasoning**

The court's reasoning focused on the interpretation of "in-person interview" under Section 7521(a)(1). The court found the term broad enough to encompass a CDP hearing, rejecting the IRS's distinction between an "interview" and a "hearing. " The court relied on dictionary definitions of "interview" and noted that a CDP hearing involves a face-to-face, formal discussion about tax collection, fitting the ordinary meaning of an interview. The court also rejected the IRS's argument that CDP hearings are voluntary, emphasizing that they are integral to the tax collection process and thus covered by the statute. Furthermore, the court noted that allowing recordings aligns with congressional intent to provide safeguards in IRS collection actions and facilitates judicial review of the IRS's determinations. The court also addressed the IRS's concerns about recording abuse but found these insufficient to override statutory rights. The decision did not address the validity of IRS regulations against recording but focused solely on the statutory right under Section 7521(a)(1).

**Disposition**

The Tax Court remanded the case to the IRS Appeals Office with instructions to offer Keene a CDP hearing that he could audio record. The court withheld action on the IRS's motion for summary judgment pending the outcome of the remanded hearing, warning Keene against making frivolous arguments at the recorded hearing.

**Significance/Impact**

This case significantly impacts taxpayer rights by affirming their ability to record IRS collection hearings, enhancing transparency and accountability in the tax collection process. It clarifies the scope of Section 7521(a)(1), potentially affecting how the IRS conducts hearings and how courts review IRS determinations. The ruling may lead to changes in IRS policy and practice regarding recordings and could influence future legislation on taxpayer rights. It also underscores the importance of clear statutory language in protecting taxpayer interests against administrative discretion.

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