

Swanson v. Commissioner, 121 T. C. 111 (U. S. Tax Ct. 2003)

In *Swanson v. Commissioner*, the U. S. Tax Court ruled that tax liabilities not supported by filed returns are not dischargeable in bankruptcy. Neal Swanson, who failed to file tax returns, argued his debts were discharged in bankruptcy. The court held that the IRS's substitutes for returns (SFRs) did not count as filed returns, thus his tax debts were not discharged, upholding the IRS's right to proceed with collection.

Parties

Neal Swanson, Petitioner, pro se, at all stages of litigation.

Commissioner of Internal Revenue, Respondent, represented by Ann S. O'Blenes, throughout the proceedings.

Facts

Neal Swanson did not file Federal income tax returns for the years 1993, 1994, and 1995. Consequently, the Commissioner of Internal Revenue (Commissioner) prepared substitutes for returns (SFRs) for these years and issued a notice of deficiency to Swanson. Swanson challenged the deficiencies in the U. S. Tax Court, but his case was dismissed for failure to state a claim upon which relief could be granted, and a decision was entered for the Commissioner. The Commissioner then assessed the tax liabilities for the years in question. Subsequently, Swanson filed for bankruptcy under Chapter 7 of the U. S. Bankruptcy Code. The bankruptcy court issued a discharge order releasing Swanson from all dischargeable debts, but did not specifically address whether his unpaid tax liabilities were discharged. The Commissioner later issued a notice of intent to levy, prompting Swanson to request a hearing under Section 6330 of the Internal Revenue Code. At the hearing, Swanson claimed his tax liabilities were discharged in bankruptcy, but the IRS Appeals officer issued a notice of determination sustaining the levy action.

Procedural History

Swanson received a notice of deficiency for the years 1993, 1994, and 1995, to which he filed a petition in the U. S. Tax Court. The court dismissed the case on February 3, 1998, for failure to state a claim upon which relief could be granted and entered a decision in favor of the Commissioner. Following the dismissal, the Commissioner assessed the tax liabilities. Swanson filed for bankruptcy under Chapter 7 on August 5, 1998, and received a discharge order on December 7, 1998. On January 23, 2000, the Commissioner issued a notice of intent to levy, and Swanson requested a hearing under Section 6330. On May 3, 2001, the IRS Appeals officer issued a notice of determination sustaining the levy, which Swanson contested by filing a petition with the U. S. Tax Court on May 11, 2001. The court directed Swanson to file a proper amended petition, which he did on June 12, 2001.

Issue(s)

Whether the U. S. Tax Court has jurisdiction to determine if Swanson’s unpaid tax liabilities were discharged in his Chapter 7 bankruptcy proceeding?
Whether Swanson’s unpaid tax liabilities were discharged under 11 U. S. C. § 523(a)(1)(B) because he did not file required returns for the tax years 1993, 1994, and 1995?

Rule(s) of Law

11 U. S. C. § 523(a)(1)(B) states that a debt for a tax or customs duty is not discharged if a required return, if required, was not filed. The court referenced the *Beard v. Commissioner* test to determine what constitutes a “return” under this section, which includes that the document must purport to be a return, be executed under penalty of perjury, contain sufficient data to calculate tax, and represent an honest and reasonable attempt to satisfy the tax law.

Holding

The U. S. Tax Court held that it had jurisdiction to determine the dischargeability of Swanson’s unpaid tax liabilities in this levy proceeding. Further, the court held that Swanson’s tax liabilities were not discharged under 11 U. S. C. § 523(a)(1)(B) because he did not file required returns for the tax years 1993, 1994, and 1995, and the SFRs prepared by the Commissioner did not constitute “returns” within the meaning of the Bankruptcy Code.

Reasoning

The court reasoned that it had jurisdiction in this levy proceeding to determine the dischargeability of Swanson’s tax liabilities, following the precedent set in *Washington v. Commissioner*. The court then analyzed whether Swanson’s liabilities were discharged under 11 U. S. C. § 523(a)(1)(B). The court determined that the SFRs prepared by the Commissioner did not meet the requirements of a “return” as set forth in *Beard v. Commissioner*, particularly because they were not signed by Swanson and did not represent an honest and reasonable attempt to comply with tax law. The court concluded that because no returns were filed, Swanson’s tax liabilities were excepted from discharge under the Bankruptcy Code. The court also addressed Swanson’s additional arguments, finding that the Commissioner was not enjoined from collecting the liabilities and that no default judgment had occurred because the Commissioner was not required to file a complaint in the bankruptcy court for debts excepted from discharge under Section 523(a)(1)(B).

Disposition

The U. S. Tax Court upheld the determination of the IRS Appeals officer to proceed with collection by levy, and decision was entered for the Commissioner.

Significance/Impact

The Swanson case reinforces the principle that tax liabilities for which no returns were filed are not dischargeable in bankruptcy. It clarifies the application of 11 U. S. C. § 523(a)(1)(B) and the role of SFRs in bankruptcy discharge proceedings. The case also establishes that the U. S. Tax Court has jurisdiction to decide dischargeability issues in levy proceedings, which can impact the strategies of taxpayers and the IRS in similar disputes. Subsequent cases have cited Swanson for its interpretation of what constitutes a “return” for bankruptcy discharge purposes, affecting how taxpayers and the IRS approach tax debt in bankruptcy proceedings.