Green v. Commissioner of Internal Revenue, 121 T. C. 301 (U. S. Tax Ct. 2003)

In Green v. Commissioner, the U. S. Tax Court ruled that George G. Green's motion for judicial review of a jeopardy assessment and levy was untimely, as it was filed beyond the 90-day statutory period. This decision underscores the strict adherence required to the procedural timelines under IRC section 7429(b)(1) for challenging IRS jeopardy actions, emphasizing that such deadlines are jurisdictional and non-negotiable, even if administrative delays occur.

Parties

George G. Green, the petitioner, sought judicial review against the Commissioner of Internal Revenue, the respondent, regarding jeopardy assessments and levies for tax years 1995 through 1999.

Facts

On May 2, 2003, the IRS issued jeopardy assessments against George G. Green for tax deficiencies totaling $12,268,808 across the taxable years 1995 through 1999. Concurrently, a notice of jeopardy levy was issued. Green requested administrative review of these actions on May 20, 2003. An administrative hearing occurred on July 16, 2003, and the IRS Appeals officer sustained the jeopardy assessment and levy. The officer notified Green's attorney on July 17, 2003, that judicial review should be sought before September 4, 2003. A final closing letter, sustaining the IRS's actions, was sent to an incorrect address on August 25, 2003, and Green did not receive it until after the September 3, 2003 deadline. Green filed a motion for judicial review on November 19, 2003, which was denied by the Tax Court as untimely.

Procedural History

Green filed a petition with the U. S. Tax Court on January 2, 2002, contesting deficiencies for tax years 1995 through 1998. On May 2, 2003, the IRS made jeopardy assessments and issued a notice of jeopardy levy for tax years 1995 through 1999. Green requested administrative review on May 20, 2003, under IRC section 7429(a)(2). After an administrative hearing on July 16, 2003, the IRS sustained the jeopardy actions. Green moved for judicial review on November 19, 2003, which the Tax Court denied due to the motion being filed beyond the 90-day period required by IRC section 7429(b)(1).

Issue(s)

Whether Green's motion for judicial review of the jeopardy assessment and jeopardy levy was timely filed under IRC section 7429(b)(1)?

Rule(s) of Law

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IRC section 7429(b)(1) mandates that a taxpayer must commence a civil action for judicial review within 90 days after the earlier of the day the IRS notifies the taxpayer of its determination under section 7429(a)(3) or the 16th day after the taxpayer's request for review under section 7429(a)(2). This requirement is jurisdictional and cannot be waived.

Holding

The Tax Court held that Green's motion for judicial review was untimely under IRC section 7429(b)(1). The court determined that the 90-day period began on June 5, 2003, the 16th day after Green's request for administrative review, and expired on September 3, 2003. Green's motion, filed on November 19, 2003, was therefore outside the statutory period, and the court lacked jurisdiction to review the jeopardy assessment and levy.

Reasoning

The Tax Court's reasoning focused on the strict interpretation of IRC section 7429(b)(1), emphasizing that the statute's use of the term 'earlier' mandated that the 90-day period commenced from the earlier of the two specified events. The court noted that the legislative intent behind section 7429 was to provide expedited review, which would be defeated if the period were measured from the later administrative determination. The court also considered prior judicial interpretations, particularly from the Eleventh Circuit in Fernandez v. United States, which similarly held that the statutory deadlines under section 7429(b)(1) were mandatory and jurisdictional. Despite the IRS's administrative delays and the misaddressed final closing letter, the court found no basis to waive the statutory requirement or extend the filing deadline, citing the jurisdictional nature of the requirement and the need for strict adherence to promote expediency in jeopardy assessment reviews.

Disposition

The Tax Court denied Green's motion for judicial review of the jeopardy assessment and jeopardy levy, as it was filed beyond the 90-day period specified in IRC section 7429(b)(1).

Significance/Impact

The decision in Green v. Commissioner reinforces the stringent procedural requirements for challenging IRS jeopardy assessments and levies under IRC section 7429. It underscores that the 90-day filing period is jurisdictional and non-waivable, even in the face of administrative delays or miscommunications. This case serves as a reminder to taxpayers of the importance of timely action in seeking judicial review of IRS actions and highlights the court's commitment to the expedited review process intended by Congress. Subsequent cases have continued to cite Green for

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its interpretation of the timeliness requirements under section 7429, affirming its impact on the procedural landscape of tax litigation involving jeopardy assessments and levies.

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