Prevo v. Commissioner, 123 T. C. 326 (U. S. Tax Court 2004)

In Prevo v. Commissioner, the U. S. Tax Court ruled that it lacked jurisdiction over a taxpayer's petition filed during the automatic stay period triggered by her bankruptcy filing. Clara Prevo received a notice of determination from the IRS concerning tax liens for several years but filed her petition with the Tax Court during her active Chapter 13 bankruptcy, which violated the automatic stay under 11 U. S. C. § 362(a)(8). This case underscores the jurisdictional limits of the Tax Court when a taxpayer is under bankruptcy protection and highlights the absence of a tolling provision for collection review petitions similar to those for deficiency petitions, leaving taxpayers vulnerable to harsh outcomes without Congressional intervention.

Parties

Clara L. Prevo, the petitioner, represented herself pro se in the proceedings. The respondent was the Commissioner of Internal Revenue, represented by Brianna Basaraba Taylor.

Facts

On February 23, 2004, the Commissioner of Internal Revenue issued a Notice of Determination Concerning Collection Action(s) to Clara L. Prevo for the taxable years 1989, 1990, 1993, 1996, 1998, and 2000. The notice determined that the filing of a Federal tax lien was appropriate due to Prevo's inability to fund an offer in compromise or an installment agreement, and her account was recommended to revert to a currently not collectible status under hardship provisions. On March 1, 2004, Prevo filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code in the U. S. Bankruptcy Court for the Northern District of Georgia. Subsequently, on March 29, 2004, Prevo filed a petition with the U. S. Tax Court challenging the Commissioner's notice of determination. The bankruptcy petition was dismissed by the bankruptcy court on March 31, 2004, and Prevo filed an amended petition with the Tax Court on May 24, 2004.

Procedural History

On August 4, 2004, the Commissioner filed a motion to dismiss Prevo's petition for lack of jurisdiction, arguing that the petition was filed in violation of the automatic stay under 11 U. S. C. § 362(a)(8). Prevo filed a response in opposition to the motion on August 18, 2004. The Tax Court, in its decision dated December 14, 2004, granted the Commissioner's motion to dismiss for lack of jurisdiction.

Issue(s)

Whether the automatic stay under 11 U. S. C. § 362(a)(8) bars the commencement of a collection review proceeding in the U. S. Tax Court under 26 U. S. C. § 6320 when a taxpayer is in bankruptcy?

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Rule(s) of Law

The automatic stay under 11 U. S. C. § 362(a)(8) expressly bars “the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor. ” The Tax Court’s jurisdiction over a collection review proceeding under 26 U. S. C. § 6320 depends on the issuance of a valid notice of determination and a timely filed petition. Unlike deficiency proceedings under 26 U. S. C. § 6213, there is no statutory provision that tolls the filing period for collection review petitions during the automatic stay.

Holding

The U. S. Tax Court held that it lacked jurisdiction over Prevo’s petition because it was filed in violation of the automatic stay imposed under 11 U. S. C. § 362(a)(8) during her active Chapter 13 bankruptcy case. The court further noted that there is no tolling provision in the Internal Revenue Code that would extend the filing period for collection review petitions during the automatic stay, as there is for deficiency petitions under 26 U. S. C. § 6213(f).

Reasoning

The court’s reasoning was based on the plain language of 11 U. S. C. § 362(a)(8), which prohibits the commencement of a proceeding in the Tax Court during the automatic stay. The court noted that there was no exception under 11 U. S. C. § 362(b) that would permit the filing of a collection review petition, nor was there any evidence that Prevo had sought or obtained relief from the automatic stay from the bankruptcy court. The court also considered the lack of a tolling provision similar to 26 U. S. C. § 6213(f) for collection review petitions under 26 U. S. C. § 6320 and 6330, which led to the harsh outcome for Prevo. The court acknowledged the gap in the statutory scheme and suggested that any remedy would require Congressional action. The court also addressed the potential applicability of 26 U. S. C. § 6330(d), which could allow Prevo 30 days to refile in the correct court if the Tax Court were deemed the incorrect court, but did not decide the issue due to lack of briefing by the parties.

Disposition

The Tax Court granted the Commissioner’s motion to dismiss for lack of jurisdiction.

Significance/Impact

The Prevo case is significant for highlighting the jurisdictional limitations of the U. S. Tax Court when a taxpayer files a petition during the automatic stay period of a bankruptcy case. It underscores the absence of a tolling provision for collection review petitions, which can lead to harsh outcomes for taxpayers who inadvertently file during the stay. The case serves as a warning to taxpayers and their attorneys to carefully consider the timing of Tax Court filings in relation to bankruptcy

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proceedings. It also calls attention to a potential gap in the statutory scheme that may require Congressional action to provide a remedy for taxpayers in Prevo's situation. Subsequent cases and legal commentary have referenced Prevo to discuss the interplay between bankruptcy law and tax collection proceedings, emphasizing the need for clarity and possibly reform in this area of law.

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