Burke v. Commissioner, 124 T. C. 189 (U. S. Tax Court 2005)

In Burke v. Commissioner, the U. S. Tax Court upheld the IRS's right to levy taxes from Kevin P. Burke for the years 1993-1997, dismissing Burke's frivolous arguments against the tax assessments. The court also imposed a $2,500 penalty on Burke for continuing to raise groundless claims, emphasizing the limits of challenging tax liabilities post-assessment and the consequences of using legal proceedings to delay collection.

Parties

Kevin P. Burke, the Petitioner, appeared pro se. The Respondent was the Commissioner of Internal Revenue, represented by Robin M. Ferguson and Stephen S. Ash.

Facts

Kevin P. Burke received statutory notices of deficiency from the Commissioner of Internal Revenue for the tax years 1993 through 1997. Burke filed a petition for redetermination with the U. S. Tax Court, which was dismissed on April 10, 2002, due to Burke's failure to properly prosecute the case. The dismissal order also sustained the tax deficiencies and imposed a penalty under Section 6673(a) of the Internal Revenue Code. The decision was affirmed by the U. S. Court of Appeals for the Ninth Circuit and became final. Subsequently, the IRS issued a Final Notice of Intent to Levy and Notice of Federal Tax Lien Filing to Burke, who requested an administrative hearing. The IRS Appeals Office sustained the filing of the tax lien and the proposed levy, which Burke challenged in a subsequent Tax Court petition. Despite warnings, Burke continued to assert frivolous arguments at trial, leading to the IRS filing a Motion to Permit Levy.

Procedural History

Burke initially filed a petition for redetermination of the tax deficiencies for 1993-1997, which was dismissed by the U. S. Tax Court for failure to prosecute. The dismissal was affirmed on appeal. After the IRS issued notices of intent to levy and notices of federal tax lien filing, Burke requested a Collection Due Process (CDP) hearing, which resulted in the IRS Appeals Office issuing a Notice of Determination Concerning Collection Action(s) sustaining the tax lien and levy. Burke then filed a timely Petition for Lien or Levy Action with the Tax Court. The IRS moved for summary judgment and to impose a penalty under Section 6673, which was denied, but the court cautioned Burke against continuing frivolous arguments. After trial, the IRS filed a Motion to Permit Levy, which the court granted, sustaining the notice of determination and imposing a Section 6673 penalty.

Issue(s)

Whether the IRS Appeals Office abused its discretion in sustaining the notice of

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determination concerning the collection action against Burke for the tax years 1993-1997?

Whether the IRS showed good cause to lift the suspension of the proposed levy pursuant to Section 6330(e)(2)?

Whether a penalty under Section 6673 should be imposed on Burke for maintaining frivolous and groundless arguments?

Rule(s) of Law

Sections 6320 and 6330 of the Internal Revenue Code establish procedures for administrative and judicial review of certain collection actions, including the requirement that the IRS provide written notice of lien or levy and the opportunity for a hearing. Section 6330(c)(2)(B) bars a taxpayer from challenging the underlying tax liability if a statutory notice of deficiency was received or the taxpayer had an opportunity to dispute such liability. Section 6330(e)(1) generally suspends levy actions pending an appeal, but Section 6330(e)(2) allows for the levy to proceed if the underlying tax liability is not at issue and the IRS shows good cause. Section 6673(a)(1) authorizes the Tax Court to impose a penalty up to $25,000 if proceedings are instituted or maintained primarily for delay or if the taxpayer's position is frivolous or groundless.

Holding

The Tax Court held that the IRS Appeals Office did not abuse its discretion in sustaining the notice of determination concerning the collection action against Burke for the tax years 1993-1997. The court further held that the IRS showed good cause to lift the suspension of the proposed levy under Section 6330(e)(2) because Burke's underlying tax liability was not at issue and he used the collection review procedure to espouse frivolous and groundless arguments to delay collection. Finally, the court held that a penalty of $2,500 under Section 6673 was due from Burke for maintaining frivolous and groundless arguments.

Reasoning

The Tax Court reasoned that Burke had previously challenged the tax deficiencies for 1993-1997 and was barred from challenging the underlying tax liabilities under Section 6330(c)(2)(B). The court found that the IRS had properly verified the assessments and followed all applicable legal and administrative procedures, as evidenced by the Forms 4340. The court also determined that Burke's arguments regarding the invalidity of the notices of deficiency were frivolous and had been previously rejected and affirmed on appeal. In granting the IRS's Motion to Permit Levy, the court concluded that the IRS had shown good cause to lift the suspension under Section 6330(e)(2) because Burke's use of the collection review procedure was primarily for delay. The court imposed a penalty under Section 6673, citing

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Burke's history of frivolous arguments and his persistence in maintaining such arguments despite warnings, which unnecessarily increased the cost of tax collection and judicial resources.

Disposition

The Tax Court granted the IRS's Motion to Permit Levy and entered a decision for the respondent, sustaining the notice of determination concerning the collection action and imposing a penalty of $2,500 under Section 6673.

Significance/Impact

Burke v. Commissioner reinforces the limits of challenging tax liabilities after the assessment process and the consequences of pursuing frivolous litigation to delay tax collection. The case underscores the importance of the IRS's ability to efficiently collect taxes and the court's authority to penalize taxpayers who abuse legal procedures. It also clarifies the application of Sections 6320, 6330, and 6673 in the context of collection actions and frivolous litigation, providing guidance for future cases involving similar issues.

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