Zapara v. Commissioner, 124 T. C. 223 (U. S. Tax Ct. 2005)

In Zapara v. Commissioner, the U. S. Tax Court ruled that the IRS must comply with a taxpayer's request to sell seized stock within 60 days or provide a reason for not doing so, as per IRC Section 6335(f). The case involved Michael and Gina Zapara, who were unable to challenge their tax liabilities from 1993-1995 due to prior agreements but sought to have seized stock sold to offset their tax debts. The court's decision underscores the IRS's obligations regarding seized property and the rights of taxpayers in jeopardy levy situations.

Parties

Michael A. Zapara and Gina A. Zapara were the petitioners, representing themselves pro se. The respondent was the Commissioner of Internal Revenue, represented by Lorraine Y. Wu.

Facts

Michael and Gina Zapara pleaded guilty to tax-related offenses for the years 1993-1995. They signed a Form 4549-CG, waiving their right to contest their tax liabilities and consenting to immediate assessment and collection. A subsequent court found that Michael's plea agreement contained erroneous calculations, leading to a sentence reduction due to ineffective assistance of counsel. The IRS made a jeopardy levy on the Zaparas' stock accounts to collect taxes for 1993-1995 and unpaid taxes for 1997 and 1998. The Zaparas requested a hearing to challenge their underlying tax liabilities and requested the IRS to sell the seized stock, alleging coercion in signing the Form 4549-CG and that its figures were overstated.

Procedural History

The Zaparas requested an Appeals Office hearing under IRC Section 6330(f) to challenge the underlying tax liabilities and requested the sale of the seized stock under IRC Section 6335(f). The IRS neither sold the stock nor determined that its sale would not be in the best interest of the United States. The Appeals Office issued a determination that the Zaparas were precluded from challenging their underlying tax liabilities and that the jeopardy levy would not be withdrawn. The Zaparas then petitioned the U. S. Tax Court for review.

Issue(s)

Whether the Zaparas, having signed a Form 4549-CG, were precluded from challenging their underlying tax liabilities for the years 1993-1995? Whether the IRS complied with the notice and demand requirements under IRC Sections 6331(a) and (d)? Whether the Zaparas were entitled to a credit for the value of the seized stock accounts as of the date by which the stock should have been sold under IRC Section 6335(f)?

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Rule(s) of Law

Under IRC Section 6330(c)(2)(B), a taxpayer who signs a Form 4549-CG waiving the right to challenge proposed assessments is precluded from contesting those tax liabilities unless signed under duress. IRC Section 6331(a) authorizes the IRS to collect assessed taxes by levy after notice and demand. IRC Section 6335(f) requires the IRS to sell seized property within 60 days of a taxpayer's request or determine that it is not in the best interest of the United States to do so. "The owner of any property seized by levy may request the Secretary to sell such property within 60 days after the request (or within such longer period as the owner may specify). "

Holding

The court held that the Zaparas were precluded from challenging their underlying tax liabilities for 1993-1995 as they did not establish signing the Form 4549-CG under duress. The IRS complied with the notice and demand requirements under IRC Sections 6331(a) and (d). The Zaparas were entitled to a credit for the value of the seized stock as of 60 days after their request to sell on August 23, 2001, due to the IRS's failure to sell the stock or make a determination under IRC Section 6335(f).

Reasoning

The court found that the Zaparas did not provide sufficient evidence to support their claim of duress in signing the Form 4549-CG. The court rejected their argument that the Form 4549-CG contained the same erroneous calculations as the plea agreement, as testified by the Revenue Agent. The court verified that the IRS complied with notice and demand requirements, as the Appeals Officer confirmed notices were sent to the Zaparas' last known address. Regarding the seized stock, the court found that the IRS did not comply with IRC Section 6335(f) by failing to sell the stock or make a determination within 60 days of the Zaparas' request. The court reasoned that the IRS's request for fair market value information was not supported by IRC Section 6335(f) or its regulations. The court also clarified that IRC Sections 6330(e)(1) and 7429 did not preclude the sale of the stock. The court's analysis focused on the statutory interpretation of IRC Section 6335(f), emphasizing the IRS's obligation to act on a taxpayer's request to sell seized property.

Disposition

The case was remanded to the Appeals Office to determine the value of the seized stock accounts as of 60 days after August 23, 2001, and to ascertain whether the Zaparas' tax liabilities for 1993-1998 remained unpaid after crediting their accounts accordingly.

Significance/Impact

Zapara v. Commissioner establishes that the IRS must adhere to the requirements of

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IRC Section 6335(f) regarding the sale of seized property, reinforcing taxpayer rights in jeopardy levy situations. The decision has implications for how the IRS handles seized property and the necessity of timely action or determination when a taxpayer requests a sale. Subsequent courts have cited Zapara to emphasize the IRS's obligations under IRC Section 6335(f), impacting the practice of tax collection and enforcement.

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