Freije v. Commissioner, 125 T. C. 14 (2005)

In Freije v. Commissioner, the U. S. Tax Court clarified its jurisdiction in reviewing IRS levies under section 6330, extending it to consider issues from years not subject to the levy notice if relevant to the unpaid tax. The court ruled that the IRS's application of 1999 remittances to recover an erroneous 1997 refund was improper, and invalidated a 1999 tax assessment made without a deficiency notice. This decision impacts how the IRS can proceed with levies and underscores the necessity of proper assessment procedures.

Parties

Joseph Paul Freije (Petitioner) filed a petition against the Commissioner of Internal Revenue (Respondent). Freije proceeded pro se, while the Commissioner was represented by Diane L. Worland.

Facts

Joseph Paul Freije and his spouse filed joint Federal income tax returns for the taxable years 1995 through 1999. In 1997, they made several remittances, one of which was applied by the IRS to their 1995 liability, which Freije contested. In 1998, Freije sent a check for $1,776 intended for 1997 taxes, but it was erroneously recorded as $11,776, leading to an overpayment and subsequent refund. The IRS later corrected this error by applying four of Freije's 1999 remittances totaling $6,500 to the 1997 account. Freije challenged the IRS's adjustments to his 1999 return, which increased his taxable income and disallowed certain deductions without issuing a notice of deficiency.

Procedural History

The IRS issued a Final Notice of Intent to Levy and Notice of Your Right to a Hearing for the taxable years 1997, 1998, and 1999. Freije timely requested a collection due process hearing, contesting the proposed levies. After the hearing, the IRS Appeals officer issued a Notice of Determination, sustaining the levies. Freije then petitioned the U. S. Tax Court for review. The court reviewed the case de novo for issues related to the underlying tax liability and for abuse of discretion in other respects.

Issue(s)

- Whether the U. S. Tax Court has jurisdiction to consider facts and issues arising in years not subject to the notice of determination when those facts and issues are relevant to computing the unpaid tax for determination years?
- Whether the IRS's application of Freije's 1999 remittances to recover an erroneous 1997 refund was proper?
- Whether the IRS's assessment of Freije's 1999 tax liability without issuing a notice of deficiency was valid?

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Rule(s) of Law

- Section 6330 of the Internal Revenue Code provides that the Tax Court has jurisdiction to review a determination by an IRS Appeals officer to proceed with a levy.
- Section 6330(c)(2)(A) allows a taxpayer to raise any relevant issue relating to the unpaid tax or the proposed levy at a hearing.
- Section 6213(a) generally prohibits the assessment of a deficiency without affording the taxpayer the opportunity to petition for redetermination in the Tax Court.
- Section 6213(b)(1) allows for the assessment of additional tax without a deficiency notice in cases of mathematical or clerical errors.

Holding

- The Tax Court held that it has jurisdiction to consider facts and issues in years not subject to the notice of determination if relevant to the unpaid tax in the determination years.
- The IRS's application of Freije's 1999 remittances to recover an erroneous 1997 refund was improper under *O'Bryant v. United States*.
- The IRS's assessment of Freije's 1999 tax liability, based on the disallowance of miscellaneous deductions without a deficiency notice, was invalid.

Reasoning

The court reasoned that its jurisdiction under section 6330(d)(1)(A) encompasses consideration of facts and issues in nondetermination years if relevant to the unpaid tax in determination years. This interpretation aligns with the legislative intent of providing a broad scope for issues raised in a section 6330 hearing. The court cited *O'Bryant v. United States*, ruling that the IRS cannot use its postassessment collection powers to recover an erroneous refund without a new assessment. Regarding the 1999 assessment, the court determined that the IRS's disallowance of miscellaneous deductions as a

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