Drake v. Commissioner, 123 T. C. 320 (U. S. Tax Court 2004)

In Drake v. Commissioner, the U. S. Tax Court ruled that ex parte communications between IRS Appeals officers and other IRS employees, which compromised the independence of the Appeals function, constituted an abuse of discretion. The court remanded the case for a new hearing, emphasizing the importance of an independent and impartial review process in IRS collection due process hearings. This decision underscores the need for procedural integrity in administrative tax proceedings.

Parties

Petitioner: Gregory Drake, residing in South Yarmouth, Massachusetts. Respondent: Commissioner of Internal Revenue, represented by the IRS.

Facts

Gregory Drake and Barbara Drake filed a joint bankruptcy petition under Chapter 13 in 1997, during which they sold three properties subject to federal tax liens. The proceeds were distributed to them upon dismissal of the bankruptcy case. Subsequently, the IRS sent a notice of intent to levy on their tax liabilities for several years. The Drakes requested a Collection Due Process (CDP) hearing under section 6330 of the Internal Revenue Code. During the administrative review, an ex parte communication occurred between Settlement Officer O'Shea and Advisor Gordon, where Advisor Gordon questioned the credibility of the Drakes' bankruptcy counsel. This communication was not disclosed to the Drakes. The Appeals Officer Kaplan later closed the case without receiving requested documentation from the Drakes.

Procedural History

The IRS Appeals Office determined that the proposed levy should be sustained against Gregory Drake. Drake timely filed a petition for review of the determination in the U. S. Tax Court, which reviewed the determination for abuse of discretion. The court considered the ex parte communication and its impact on the independence of the Appeals function.

Issue(s)

Whether the ex parte communication between the IRS Appeals officer and another IRS employee, which questioned the credibility of the taxpayer's representative, constituted an abuse of discretion under section 6330 of the Internal Revenue Code?

Rule(s) of Law

Section 6330 of the Internal Revenue Code requires the IRS to provide taxpayers with a notice of intent to levy and the opportunity for a hearing before the IRS Office

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of Appeals. The Appeals officer must conduct the hearing independently and impartially, as mandated by the Internal Revenue Service Restructuring and Reform Act of 1998. Revenue Procedure 2000-43 prohibits ex parte communications between Appeals officers and other IRS employees to the extent that such communications appear to compromise the independence of the Appeals function.

Holding

The U. S. Tax Court held that the ex parte communication between Settlement Officer O'Shea and Advisor Gordon, which questioned the credibility of the taxpayer's representative, constituted an abuse of discretion. The court remanded the case to the IRS Appeals Office for a new section 6330 hearing before an independent Appeals officer.

Reasoning

The court's reasoning focused on the necessity of an independent and impartial Appeals function, as required by the Internal Revenue Service Restructuring and Reform Act of 1998. The court noted that the ex parte communication between Settlement Officer O'Shea and Advisor Gordon, which involved questioning the credibility of the taxpayer's representative, was not ministerial, administrative, or procedural in nature. This communication violated Revenue Procedure 2000-43, which prohibits such ex parte communications to ensure the independence of the Appeals function. The court emphasized that the taxpayer was not given an opportunity to participate in this communication, which may have damaged the taxpayer's credibility in the administrative proceedings. The court's decision to remand the case for a new hearing was based on the need to ensure that the Appeals officer could conduct an impartial review without being influenced by prior communications questioning the taxpayer's credibility.

Disposition

The U. S. Tax Court remanded the case to the IRS Appeals Office for a new section 6330 hearing before an independent Appeals officer who has received no communication relating to the credibility of the petitioner or petitioner's representative.

Significance/Impact

The Drake v. Commissioner decision underscores the importance of procedural integrity in IRS collection due process hearings. It reinforces the prohibition on ex parte communications between Appeals officers and other IRS employees, emphasizing the need for an independent and impartial review process. This ruling has significant implications for the administration of tax collection procedures, ensuring that taxpayers receive fair treatment and the opportunity to present their case without bias. Subsequent cases have cited Drake to support the principle that

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the independence of the Appeals function is crucial to the fairness of IRS proceedings.

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