Ginsburg v. Commissioner, 127 T. C. 75 (U. S. Tax Ct. 2006)

In Ginsburg v. Commissioner, the U. S. Tax Court held that the IRS's notice of deficiency to the taxpayers was untimely due to the statute of limitations expiring on affected items related to a partnership. The case underscores the necessity for the IRS to specifically reference partnership items in extension agreements to validly extend the limitations period for assessing affected items. This ruling impacts how the IRS must handle the statute of limitations in cases involving partnership tax assessments.

Parties

Alan H. Ginsburg and the Estate of Harriet F. Ginsburg, represented by Alan H. Ginsburg as personal representative (Petitioners), challenged the Commissioner of Internal Revenue (Respondent).

Facts

In 1995, Alan and Harriet Ginsburg owned 100% of North American Sports Management, Inc. (NASM) and Family Affordable Partners, Inc. (FAP), respectively, both S corporations. NASM and FAP each held a 50% interest in UK Lotto, LLC, a TEFRA partnership. UK Lotto reported a $7,351,237 ordinary loss on its 1995 Form 1065, with $6,936,038 of this loss stemming from its investment in Pascal & Co. NASM and FAP reported their respective 50% shares of UK Lotto's loss on their corporate returns, and the Ginsburgs reported these losses on their personal tax return. The IRS audited UK Lotto's return, accepted it as filed, and executed Forms 872-P to extend the period for assessing partnership items until December 31, 2003. Separately, the Ginsburgs executed Forms 872 with the IRS to extend the period for assessing their individual taxes until June 30, 2005, but these forms did not reference partnership items.

Procedural History

The IRS issued a notice of deficiency to the Ginsburgs on April 26, 2005, for the taxable year 1995, disallowing losses from UK Lotto. The Ginsburgs moved to dismiss for lack of jurisdiction, arguing that the adjustments were partnership items that should have been handled at the partnership level. They also moved for summary judgment, asserting that the statute of limitations on affected items had expired. The Tax Court had jurisdiction to review the case to the extent the adjustments pertained to affected items.

Issue(s)

Whether the IRS's notice of deficiency to the Ginsburgs was valid in adjusting losses attributable to a partnership at the partner level under TEFRA provisions?

Whether the period of limitations on assessment of tax attributable to affected items

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had expired under sections 6501 and 6229 of the Internal Revenue Code?

Rule(s) of Law

Under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), partnership items must be determined at the partnership level. Affected items are items that depend on partnership items but are unique to each partner. Section 6229(a) of the Internal Revenue Code sets a three-year period for assessing taxes attributable to partnership items or affected items, which can be extended by agreement under section 6229(b). Section 6229(b)(3) specifies that any agreement under section 6501(c)(4) applies to partnership items only if it expressly provides so.

Holding

The Tax Court held that the IRS's notice of deficiency adjusted both partnership and affected items. The court had jurisdiction over the affected items. However, the notice of deficiency was untimely because the Forms 872 executed with the Ginsburgs did not reference partnership or affected items as required by section 6229(b)(3).

Reasoning

The court analyzed the IRS's notice of deficiency and determined that it adjusted both partnership items (which were final due to the expiration of the limitations period for UK Lotto) and affected items (which were unique to the Ginsburgs and could be adjusted at the partner level). The court held that it had jurisdiction over the affected items because the IRS had accepted UK Lotto's return as filed, fulfilling the requirement for an outcome of a partnership proceeding.

Regarding the statute of limitations, the court interpreted section 6229(b)(3) to require specific mention of partnership items in Forms 872 to extend the period for assessing affected items. The court rejected the IRS's argument that section 6229(b)(3) applied only to partnership items, not affected items, by noting that the statute refers to the period described in section 6229(a), which includes both partnership and affected items. The court also referenced prior caselaw, secondary authority, and the IRS's own manual to support its interpretation. The court emphasized that failing to include a reference to partnership items in the extension agreements would lead to untenable consequences and ambiguity, which the statute aims to avoid.

Disposition

The Tax Court granted the Ginsburgs' motion for summary judgment, holding that the period of limitations on assessment of tax attributable to affected items had expired. The court dismissed the case for lack of jurisdiction over the partnership items and entered an appropriate order and decision.

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Significance/Impact

Ginsburg v. Commissioner clarifies the IRS's obligations under section 6229(b)(3) to specifically reference partnership items in extension agreements to extend the period for assessing affected items. This decision impacts how the IRS must handle statute of limitations issues in cases involving partnerships and their partners, ensuring that taxpayers receive clear notice of the IRS's intent to extend the period for assessing taxes related to partnership investments. The ruling also reaffirms the distinction between partnership and affected items under TEFRA, reinforcing the need for the IRS to correctly identify and address these items in tax assessments.

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