***Calafati v. Commissioner of Internal Revenue, 127 T. C. 219 (U. S. Tax Ct. 2006)***

In Calafati v. Commissioner, the U. S. Tax Court ruled that taxpayers have no statutory right to audio record IRS telephone hearings under Section 7521(a)(1), but can record face-to-face hearings. The case was remanded for a face-to-face hearing due to IRS's failure to inform the taxpayer of its policy change post-Keene, allowing audio recordings in such settings. This decision clarifies the scope of taxpayer rights in IRS collection due process hearings, impacting future administrative procedures.

**Parties**

Dominic Calafati, the Petitioner, sought review of a determination by the Commissioner of Internal Revenue, the Respondent, regarding his 1998 federal income tax liability. Calafati was represented by David S. Brady, while the Commissioner was represented by Jack T. Anagnostis.

**Facts**

Dominic Calafati timely filed his 1998 federal income tax return. On April 3, 2002, the IRS issued a notice of deficiency asserting a tax deficiency of $8,173 and an accuracy-related penalty of $1,634. 60. Calafati appealed the notice but did not petition the Tax Court. The IRS assessed the deficiency on August 26, 2002, and later issued a Final Notice of Intent to Levy on December 21, 2002. Calafati requested a Collection Due Process (CDP) hearing under Section 6330, citing administrative errors and procedural due process violations. After the Tax Court's decision in Keene v. Commissioner, which allowed audio recording of face-to-face CDP hearings, Calafati's representative, Albert Wagner, requested a telephone hearing and expressed an intent to audio record it. The IRS denied this request, and the hearing was convened and terminated without discussion of substantive issues. The IRS then issued a Notice of Determination upholding the levy, prompting Calafati to file a petition with the Tax Court challenging the IRS's refusal to allow audio recording.

**Procedural History**

Calafati filed a petition in the U. S. Tax Court contesting the IRS's Notice of Determination. He moved for summary judgment, arguing that he had a statutory right under Section 7521(a)(1) to audio record his telephone hearing. The Tax Court held a hearing on the motion, where both parties presented arguments. The court's final decision partially granted Calafati's motion, denying the right to audio record telephone hearings but remanding the case for a face-to-face hearing due to the IRS's failure to communicate its post-Keene policy.

**Issue(s)**

Whether Section 7521(a)(1) of the Internal Revenue Code entitles a taxpayer to

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audio record a telephone hearing conducted pursuant to Section 6330?

Whether the IRS was obligated to inform Calafati of its post-Keene policy allowing audio recording of face-to-face hearings but not telephone hearings?

**Rule(s) of Law**

Section 7521(a)(1) of the Internal Revenue Code allows a taxpayer to audio record "any in-person interview" related to the determination or collection of any tax upon advance request. Section 6330 requires the IRS to offer a CDP hearing before levying on a taxpayer's property, which can be conducted face-to-face or by telephone at the taxpayer's option. The Tax Court's decision in Keene v. Commissioner, 121 T. C. 8 (2003), established that taxpayers have a right to audio record face-to-face CDP hearings under Section 7521(a)(1).

**Holding**

The Tax Court held that Section 7521(a)(1) does not entitle Calafati to audio record his Section 6330 telephone hearing because such a hearing does not constitute an "in-person interview. " However, due to the IRS's failure to inform Calafati of its post-Keene policy allowing audio recording of face-to-face hearings, the court remanded the case for a face-to-face hearing where Calafati could exercise his right to audio record.

**Reasoning**

The court's reasoning focused on the interpretation of "in-person interview" under Section 7521(a)(1). It noted that dictionaries define "in-person" as involving physical presence, which is not applicable to telephone hearings. The court distinguished between face-to-face and telephone hearings, citing its prior decision in Keene, which specifically applied to face-to-face hearings. The court also considered the legislative history of Section 7521, which implied physical presence during interviews. Although some arguments for allowing audio recordings of telephone hearings were acknowledged, such as facilitating judicial review, the court emphasized adherence to the statutory text's limitation to "in-person" interviews. Regarding the IRS's obligation to inform Calafati of its post-Keene policy, the court recognized the IRS's need for time to adjust to new rulings but found the lack of communication significant enough to warrant a remand for a face-to-face hearing, allowing Calafati to exercise his recording rights.

**Disposition**

The Tax Court granted Calafati's motion for summary judgment in part, denying the right to audio record telephone hearings but remanding the case to the IRS Office of Appeals for a face-to-face hearing where Calafati could audio record the proceedings.

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**Significance/Impact**

Calafati v. Commissioner clarifies the scope of taxpayer rights under Section 7521(a)(1) regarding the audio recording of IRS hearings. It establishes that telephone hearings do not qualify as “in-person interviews,” limiting the right to record to face-to-face settings. This decision impacts how the IRS must conduct and communicate its policies regarding CDP hearings, emphasizing the need for clear communication of changes in policy. The case also reflects the Tax Court’s willingness to remand cases to the IRS for proper hearings when procedural fairness is at stake, reinforcing the importance of due process in tax collection proceedings.

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