Ginsberg v. Commissioner, 130 T. C. 88 (2008)

In *Ginsberg v. Commissioner*, the U. S. Tax Court ruled that it lacked jurisdiction over a supplemental determination notice issued after the effective date of the Pension Protection Act of 2006, which expanded the court's jurisdiction to include trust fund recovery penalties. The court determined that the supplemental notice related back to the original notice, issued before the Act's effective date, thus maintaining the jurisdiction with the District Court. This decision clarifies the scope of the Tax Court's jurisdiction following statutory amendments and impacts how taxpayers and the IRS handle collection appeals.

Parties

Morton L. Ginsberg, the Petitioner, contested the Commissioner of Internal Revenue's determinations regarding trust fund recovery penalties. The case progressed through various stages, with Ginsberg initially filing a complaint with the U. S. District Court for the District of New Jersey, which remanded the case to the IRS's Appeals Office. Subsequently, Ginsberg filed a petition with the U. S. Tax Court following a supplemental determination notice.

Facts

Morton L. Ginsberg, a real estate investor, controlled multiple entities that accrued payroll tax liabilities. On March 25, 1999, the Commissioner sent Ginsberg a Final Notice of Intent to Levy for trust fund recovery penalties under section 6672 for periods ending in 1991, 1992, and 1994. After a hearing, the IRS issued an original determination notice on June 20, 2003, sustaining the proposed levy action. Ginsberg contested this notice by filing a complaint with the District Court, which remanded the case to the IRS's Appeals Office. A supplemental hearing resulted in a supplemental determination notice on April 26, 2007, which Ginsberg challenged by filing a petition with the Tax Court on May 23, 2007.

Procedural History

Ginsberg initially filed a complaint with the U. S. District Court for the District of New Jersey challenging the original determination notice issued on June 20, 2003. The District Court remanded the case to the IRS's Appeals Office, which issued a supplemental determination notice on April 26, 2007. Ginsberg then filed a petition with the U. S. Tax Court to review the supplemental notice. The Commissioner moved to dismiss the Tax Court case for lack of jurisdiction, arguing that the District Court retained jurisdiction as the original notice predated the effective date of the Pension Protection Act of 2006.

Issue(s)

Whether the U. S. Tax Court has jurisdiction to review the Commissioner's determinations set forth in a supplemental determination notice issued after the

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effective date of the Pension Protection Act of 2006, when the original determination notice was issued before the Act's effective date.

Rule(s) of Law

The Pension Protection Act of 2006 amended section 6330(d) of the Internal Revenue Code to expand the U. S. Tax Court's jurisdiction over section 6330 determinations made after October 16, 2006. Prior to this amendment, the Tax Court lacked jurisdiction over trust fund recovery penalties. The Internal Revenue Code, section 6330(a)(1) and (b)(2), provides that a taxpayer is entitled to only one notice of intent to levy and one hearing per taxable period. A supplemental determination notice is considered a supplement to the original determination notice and does not constitute a new determination.

Holding

The U. S. Tax Court held that it lacked jurisdiction to review the Commissioner's determinations in the supplemental determination notice because the supplemental notice related back to the original determination notice, which was issued before the effective date of the Pension Protection Act of 2006. Therefore, the Tax Court did not have jurisdiction over the underlying tax liability as per the original notice.

Reasoning

The court reasoned that a supplemental determination notice is merely a supplement to the original notice and does not create a new determination. The supplemental notice, issued after the effective date of the Pension Protection Act, related back to the original notice, which was issued before the Act's effective date. The court cited its limited jurisdiction and the rule that it could only review determinations made after October 16, 2006, under the amended section 6330(d). The court also referenced the IRS's Chief Counsel Notice CC-2007-001, which supports the view that the District Court retains jurisdiction in such cases. The court's analysis included statutory interpretation, adherence to precedent, and consideration of policy implications concerning the finality of determinations and the administrative process of tax collection.

Disposition

The U. S. Tax Court granted the Commissioner's motion to dismiss for lack of jurisdiction, affirming that the case should remain with the U. S. District Court for the District of New Jersey.

Significance/Impact

The decision in *Ginsberg v. Commissioner* clarifies the jurisdictional boundaries between the U. S. Tax Court and District Courts concerning supplemental determination notices issued after statutory amendments. It establishes that a

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supplemental notice does not create a new determination for jurisdictional purposes, thereby affecting how taxpayers and the IRS navigate the appeals process for collection actions. The ruling underscores the importance of the effective date of statutory changes in determining court jurisdiction and has implications for the consistency and efficiency of tax litigation.

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