T.C. Memo. 2007-280

A corporation is collaterally estopped from denying its responsibility for employment taxes when its president and sole shareholder has already been convicted of conspiracy to defraud the United States by failing to pay those same taxes.

Summary

Hi-Q Personnel, Inc. operated a temporary employment service. Its president and sole shareholder, Luan Nguyen, was convicted of conspiring to defraud the U.S. by failing to pay employment taxes on wages paid in cash to temporary laborers. The IRS then sought to collect the unpaid employment taxes and fraud penalties from Hi-Q. The Tax Court held that Hi-Q was collaterally estopped from denying its responsibility for the taxes because of Nguyen's prior conviction. Even without issue preclusion, the court found Hi-Q liable as the statutory employer and upheld the fraud penalties due to Hi-Q's intentional scheme to evade taxes by paying workers in cash and concealing those payments.

Facts

Hi-Q provided temporary laborers to client companies. It allowed laborers to choose between being paid by check or in cash. Hi-Q treated those paid by check as employees for tax purposes, but disregarded those paid in cash. Luan Nguyen, Hi-Q's president, was indicted and pleaded guilty to criminal charges related to the failure to pay employment taxes on the cash wages. Hi-Q's client contracts stated that Hi-Q was responsible for payroll taxes. Hi-Q promised clients they could avoid paying "Employee Tax" and "Social Security" by using Hi-Q. To generate cash, Hi-Q cashed client checks at check-cashing agencies and did not record these proceeds as income or the cash payments as expenses.

Procedural History

The IRS issued a Notice of Determination of Worker Classification to Hi-Q, asserting liabilities for employment taxes and fraud penalties. Hi-Q petitioned the Tax Court, contesting the IRS's determination. The Tax Court ruled in favor of the IRS, finding Hi-Q liable for the taxes and penalties.

Issue(s)

1. Whether Hi-Q is collaterally estopped from denying its responsibility for paying employment taxes due to the prior criminal conviction of its president.

2. Whether the workers identified as "Temporary Laborers" should be classified as Hi-Q's employees.

3. Whether Hi-Q is liable for the employment taxes.

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4. Whether Hi-Q is liable for fraud penalties.

5. Whether the periods of limitations for assessing and collecting the employment taxes have expired.

Holding

1. Yes, because the president's conviction established Hi-Q's responsibility for the taxes.

2. Yes, because Hi-Q controlled the payment of wages and is therefore the statutory employer.

3. Yes, because Hi-Q is the statutory employer of the temporary laborers.

4. Yes, because Hi-Q intentionally concealed information to avoid paying taxes.

5. No, because Hi-Q filed fraudulent returns, removing the statute of limitations.

Court's Reasoning

The Tax Court applied the doctrine of issue preclusion, finding that the issues in the criminal case (Nguyen's guilt for failing to pay employment taxes) were identical to those in the civil case (Hi-Q's liability for those taxes). The court determined that Nguyen's guilty plea constituted a judgment on the merits. Because Nguyen was Hi-Q's president and sole shareholder, the court found privity between him and the corporation. Even without issue preclusion, the court found Hi-Q liable as the statutory employer under Section 3401(d)(1) because it controlled the payment of wages. The court also upheld the fraud penalties under Section 6663(a), finding that Hi-Q intentionally concealed its tax obligations. The court reasoned that Hi-Q's actions, such as paying workers in cash and not recording those payments, demonstrated an intent to evade taxes. As the court stated, "Corporate fraud necessarily depends upon the fraudulent intent of the corporate officer." Finally, the court held that the statute of limitations did not apply because Hi-Q filed false or fraudulent returns.

Practical Implications

This case clarifies that a corporation can be held liable for employment taxes and fraud penalties based on the actions of its officers. A guilty plea from a corporate officer can have collateral estoppel effect against the corporation in subsequent civil tax proceedings. The case also reinforces the principle that control over wage payments determines who is the statutory employer for tax purposes, even if they are not the common law employer. This decision highlights the importance of accurate record-keeping and proper tax withholding, and serves as a warning to businesses that attempt to evade employment tax obligations through schemes involving cash payments and concealed payrolls. Later cases may cite this ruling

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when determining liability for employment taxes in similar situations where corporate officers have been convicted of tax fraud.

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