Intermountain Ins. Serv. of Vail, LLC v. Commissioner, 134 T. C. 211 (2010)
(United States Tax Court, 2010)

In *Intermountain Ins. Serv. of Vail, LLC v. Commissioner*, the U. S. Tax Court ruled that temporary regulations issued by the IRS after the court's decision were not applicable and invalid. The case involved a dispute over the period of limitations for assessing tax, where the IRS argued for a 6-year period due to an alleged omission from gross income. The court held that the 3-year period had expired before the temporary regulations were issued, and that these regulations could not retroactively extend the period. This decision underscores the court's reluctance to grant motions to reconsider based on new regulations that conflict with established judicial precedent.

Parties

Intermountain Insurance Service of Vail, LLC, and Thomas A. Davies, as Tax Matters Partner, were the petitioners, while the Commissioner of Internal Revenue was the respondent. The case was initially heard by the United States Tax Court, and the petitioners sought review of a Final Partnership Administrative Adjustment (FPAA) issued by the respondent.

Facts

The case centered on transactions that occurred in 1999, which were reported on the 1999 Form 1065 of Intermountain. The IRS issued an FPAA on September 14, 2006, determining that Intermountain's transactions were a tax shelter and lacked economic substance. The IRS argued that there was an overstatement of partnership basis, which they claimed triggered a 6-year period of limitations for assessing tax. The petitioners moved for summary judgment, asserting that the 3-year period of limitations had expired before the FPAA was issued. The IRS conceded that the 3-year period had expired but argued for the applicability of a 6-year period under sections 6229(c)(2) and 6501(e)(1)(A).

Procedural History

The petitioners filed a petition in the U. S. Tax Court on December 4, 2006, challenging the FPAA. On September 1, 2009, the court granted the petitioners' motion for summary judgment, ruling that the 3-year period of limitations under section 6501(a) had expired. Subsequently, on September 24, 2009, the IRS issued temporary regulations that redefined an omission from gross income to include an overstatement of basis, which they argued should apply retroactively. The IRS then filed motions to vacate the court's decision and to reconsider its opinion, based on these new regulations.

Issue(s)

Whether the temporary regulations issued by the IRS on September 24, 2009, apply

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retroactively to the case at hand, thereby extending the period of limitations for assessing tax from three to six years?

Whether the temporary regulations are valid and entitled to judicial deference?

Rule(s) of Law

The controlling legal principles are found in sections 6229(c)(2) and 6501(e)(1)(A) of the Internal Revenue Code, which extend the period of limitations for assessing tax from three to six years if there is an omission from gross income exceeding 25% of the amount stated in the return. The IRS's temporary regulations, sections 301. 6229(c)(2)-1T and 301. 6501(e)-1T, attempted to redefine an omission to include an overstatement of basis.

Holding

The court held that the temporary regulations did not apply to the case because the applicable 3-year period of limitations had expired before their issuance. The court also ruled that the temporary regulations were invalid because they conflicted with the Supreme Court's interpretation in *Colony, Inc. v. Commissioner*, which held that an overstatement of basis does not constitute an omission from gross income.

Reasoning

The court reasoned that the plain meaning of the temporary regulations' effective/applicability date provisions indicated that they did not apply to the case since the period of limitations had expired before their issuance. The court rejected the IRS's interpretation that the temporary regulations should apply because they could have extended the period of limitations had they been in effect earlier. The court also found that the temporary regulations were invalid because they conflicted with the unambiguous holding in *Colony, Inc. v. Commissioner*, which the court determined had left no room for agency discretion under the *Chevron* framework. The court emphasized that the Supreme Court's use of legislative history in *Colony* clarified the statute's ambiguity, and thus, the temporary regulations could not override this precedent.

Disposition

The court denied the IRS's motions to reconsider and to vacate its decision, affirming that the temporary regulations were not applicable and invalid.

Significance/Impact

This case highlights the limits of the IRS's ability to issue retroactive regulations that conflict with established judicial precedent. It reaffirms the principle that temporary regulations cannot be applied retroactively to extend the period of limitations for assessing tax when the applicable period has already expired. The

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decision also underscores the importance of the *Colony* precedent in defining what constitutes an omission from gross income, and it serves as a reminder of the constraints on agency discretion when interpreting ambiguous statutory language.

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