Tucker v. Commissioner, 135 T. C. 114, 2010 U. S. Tax Ct. LEXIS 22, 135 T. C. No. 6 (U. S. Tax Court, July 26, 2010)

In Tucker v. Commissioner, the U. S. Tax Court ruled that IRS Appeals Officers conducting Collection Due Process (CDP) hearings are not "inferior Officers of the United States" under the Appointments Clause. This decision affirms that such officers, not being appointed by the President or the Secretary of the Treasury, can still legally perform their duties, which include reviewing tax liens and levies. The ruling clarifies the scope of the Appointments Clause and impacts how federal agencies structure their personnel to handle administrative appeals.

Parties

Larry E. Tucker, the petitioner, challenged the authority of IRS Appeals Officers in his CDP hearing. The respondent, the Commissioner of Internal Revenue, defended the hiring practices and the legal standing of the Appeals Officers involved in Tucker's case.

Facts

Larry E. Tucker filed late tax returns for the years 2000, 2001, and 2002, reporting tax liabilities but failing to pay them. The IRS assessed these liabilities and issued a notice of federal tax lien (NFTL) to Tucker. He requested a CDP hearing under I. R. C. sec. 6320, which was conducted by an IRS settlement officer. After the hearing, a team manager issued a notice of determination upholding the NFTL. Tucker then appealed to the Tax Court, arguing that the settlement officers and team managers, hired by the Commissioner under I. R. C. sec. 7804(a), lacked the authority to conduct the hearing because they were not appointed by the President or the Secretary of the Treasury as required by the Appointments Clause.

Procedural History

Tucker timely requested a CDP hearing, which resulted in an initial determination upholding the NFTL. He then filed a petition with the Tax Court. After initial proceedings, the Tax Court remanded the case to the IRS Office of Appeals for further consideration. A supplemental CDP hearing was conducted by another settlement officer, and a supplemental notice of determination again upheld the NFTL. Tucker moved for a second remand, arguing that the hearing should be conducted by an officer appointed in compliance with the Appointments Clause.

Issue(s)

Whether the "officer or employee" of the IRS Office of Appeals who conducts CDP hearings under I. R. C. sec. 6320 and 6330 is an "inferior Officer of the United States" subject to the Appointments Clause?

Rule(s) of Law

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The Appointments Clause of Article II, Section 2 of the U. S. Constitution requires that all "Officers of the United States" be appointed by the President with the advice and consent of the Senate, or by the President alone, the courts of law, or the heads of departments, as Congress may by law vest. An "officer" is defined as any appointee exercising significant authority pursuant to the laws of the United States.

Holding

The Tax Court held that the IRS Appeals Officers conducting CDP hearings are not "inferior Officers of the United States" under the Appointments Clause. The court found that the position of a CDP hearing officer is not "established by Law" and that such officers do not exercise "significant authority" as required to be considered "officers. "

Reasoning

The court reasoned that the IRS Appeals Officers' positions were not explicitly established by statute, but rather by the Commissioner under I. R. C. sec. 7804(a). The court also examined the nature of the authority exercised by these officers, concluding that they lack the final decision-making power that would characterize them as "officers. " The court distinguished between "principal" and "inferior" officers, and between "officers" and non-officer employees, noting that the Appeals Officers' determinations are subject to review and can be overturned within the IRS. The court further analyzed historical and current practices within the IRS and other federal agencies, finding that the Appeals Officers' role is consistent with that of non-appointed employees throughout government history. The court rejected Tucker's argument that the Appeals Officers should be treated similarly to Special Trial Judges, noting that unlike the latter, Appeals Officers do not have the authority to make final decisions.

Disposition

The Tax Court denied Tucker's motion for a second remand, affirming that the IRS Appeals Officers conducting CDP hearings are properly hired by the Commissioner and not subject to the Appointments Clause.

Significance/Impact

This ruling clarifies the application of the Appointments Clause to IRS Appeals Officers and affirms the legality of the current structure of the IRS Office of Appeals. It impacts how federal agencies can delegate authority to non-appointed employees and reinforces the distinction between "officers" and "employees" in federal law. The decision also provides guidance on the scope of authority that can be exercised by non-appointed personnel within administrative agencies, particularly in the context of tax collection and appeals.

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