Kenneth William Kasper v. Commissioner of Internal Revenue, 137 T. C. 37 (U. S. Tax Court 2011)

In a landmark ruling, the U. S. Tax Court upheld its jurisdiction to hear whistleblower appeals under IRC § 7623(b)(4), emphasizing that the 30-day appeal period begins upon mailing or personal delivery of the IRS's determination. Kenneth Kasper's timely appeal against the denial of his whistleblower award for information against a CEO was upheld, clarifying procedural requirements and reinforcing whistleblower rights to judicial review.

Parties

Kenneth William Kasper, the petitioner, filed his whistleblower claim pro se. The respondent was the Commissioner of Internal Revenue, represented by John T. Kirsch.

Facts

Kenneth William Kasper filed a whistleblower claim with the IRS Whistleblower Office on January 29, 2009, alleging that a public corporation and its CEO failed to pay required overtime and withhold employment taxes. The Whistleblower Office bifurcated Kasper's claim into two separate claims: one against the corporation and one against the CEO. On June 19, 2009, the Whistleblower Office issued denial letters for both claims, stating that Kasper's information did not meet the criteria for an award under IRC § 7623(b). Kasper inquired about the status of his claim on May 3, 2010, and received a copy of the denial letter for the CEO claim on May 24, 2010. He filed a petition with the U. S. Tax Court on June 14, 2010, seeking review of the denial of his whistleblower claim against the CEO.

Procedural History

The Commissioner filed a motion to dismiss for lack of jurisdiction, arguing that no determination was made under IRC § 7623(b) and that Kasper failed to file his petition within 30 days of the alleged determination. The Tax Court denied the motion to dismiss with respect to the CEO claim, holding that it had jurisdiction over Kasper's timely filed petition.

Issue(s)

Whether a letter denying a whistleblower claim constitutes a "determination" within the meaning of IRC § 7623(b)(4)?

Whether the petitioner filed a petition with the Tax Court "within 30 days of such determination" to establish subject matter jurisdiction under IRC § 7623(b)(4)?

Rule(s) of Law

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IRC § 7623(b)(4) states that any determination regarding an award under § 7623(b) may be appealed to the Tax Court within 30 days of such determination. The court must determine when the 30-day period begins, as the statute does not specify the starting date for the appeal period.

Holding

The Tax Court held that a letter denying a whistleblower claim constitutes a "determination" within the meaning of IRC § 7623(b)(4), as per the precedent set in Cooper v. Commissioner, 135 T. C. 70 (2010). The court further held that the 30-day period for filing an appeal begins on the date of mailing or personal delivery of the determination to the whistleblower at their last known address. The Commissioner must prove by direct evidence the date and fact of mailing or delivery. Kasper's petition was timely filed with respect to the CEO claim, as it was filed within 30 days of receiving the denial letter on May 24, 2010.

Reasoning

The court reasoned that the denial letter from the Whistleblower Office constitutes a final administrative decision and, therefore, a "determination" under IRC § 7623(b)(4). It rejected the Commissioner's argument that a determination could only be made if the information led to an award, emphasizing the right to appeal any final administrative decision.

The court established that the 30-day appeal period begins upon mailing or personal delivery of the determination to the whistleblower's last known address. This interpretation aligns with due process principles, ensuring whistleblowers receive notice and an opportunity to appeal. The court required the Commissioner to prove mailing or delivery by direct evidence, citing Magazine v. Commissioner, 89 T. C. 321 (1987), and criticized the lack of such evidence in this case for the June 19, 2009, denial letters. The court found that Kasper's petition was timely filed based on the mailing date of the CEO claim denial letter on May 24, 2010.

Disposition

The Tax Court denied the Commissioner's motion to dismiss for lack of jurisdiction with respect to the CEO claim, as Kasper's petition was filed within the 30-day period following the mailing of the denial letter on May 24, 2010.

Significance/Impact

This decision clarifies the procedural requirements for whistleblower appeals under IRC § 7623(b)(4), emphasizing the importance of timely notice and the right to judicial review. It establishes that the 30-day appeal period begins upon mailing or personal delivery of the IRS's determination, and requires the Commissioner to provide direct evidence of such mailing or delivery. The ruling reinforces whistleblower protections and ensures due process in the appeal of denied claims,

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potentially impacting future IRS practices and whistleblower litigation.

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