Bergmann v. Commissioner of Internal Revenue, 137 T. C. 136 (2011)

In Bergmann v. Comm'r, the U. S. Tax Court clarified that the period to file a qualified amended return (QAR) ends when the IRS initiates a promoter investigation, regardless of whether penalties are imposed. The court also ruled that tax underpayments due to deductions disallowed for lack of economic substance or tax avoidance do not trigger a 40% gross valuation penalty. This decision impacts tax practitioners by defining the termination of QAR filing periods and the scope of gross valuation penalties.

Parties

Jeffrey K. Bergmann and Kristine K. Bergmann (Petitioners) v. Commissioner of Internal Revenue (Respondent)

Facts

Jeffrey K. Bergmann, a former tax partner at KPMG, participated in two Short Option Strategy (SOS)-like transactions in 2000 and 2001. These transactions, facilitated by KPMG's David Greenberg, were intended to generate tax losses by artificially inflating basis. The Bergmanns claimed deductions for these losses on their 2001 federal income tax return. In 2004, they filed an amended return, removing the losses but not conceding their invalidity. The IRS, investigating KPMG for promoting abusive tax shelters, issued a summons in 2002 specifically concerning transactions described in Notice 2000-44, which included the Bergmanns' 2000 transaction.

Procedural History

The IRS issued a notice of deficiency to the Bergmanns for 2001 and 2002, asserting tax deficiencies and accuracy-related penalties. The Bergmanns conceded the 2002 penalties and the invalidity of their 2001 deductions but contested the penalties. The case was tried before the U. S. Tax Court, which ruled on two main issues: whether the Bergmanns filed a QAR and whether they were liable for the gross valuation penalty.

Issue(s)

1. Whether the Bergmanns filed a qualified amended return (QAR) for 2001 under section 1. 6664-2(c)(3), Income Tax Regs.
2. Whether the Bergmanns' tax underpayment for 2001 was attributable to a gross valuation misstatement under section 6662(h), I. R. C.

Rule(s) of Law

1. A QAR is an amended return filed before certain terminating events, including the IRS's first contact with a person regarding a promoter investigation under section

6700, I. R. C. (section 1. 6664-2(c)(3)(ii), Income Tax Regs.).
2. The gross valuation penalty under section 6662(h), I. R. C. , applies to underpayments attributable to gross valuation misstatements.
3. Under Ninth Circuit precedent, the gross valuation penalty does not apply when deductions or credits are disallowed for lack of economic substance or tax avoidance (Keller v. Commissioner, 556 F. 3d 1056 (9th Cir. 2009)).

Holding

1. The Bergmanns did not file a QAR for 2001 because the period to file a QAR terminated before they filed their amended return due to the IRS's summons to KPMG regarding a promoter investigation.
2. The Bergmanns' tax underpayment for 2001 was not attributable to a gross valuation misstatement, and thus they were not liable for the 40% gross valuation penalty but were liable for the 20% accuracy-related penalty they conceded.

Reasoning

The court held that the IRS's summons to KPMG regarding transactions described in Notice 2000-44 terminated the period for filing a QAR, as it was a promoter investigation under section 6700, I. R. C. The court rejected the Bergmanns' argument that the IRS needed to establish KPMG's liability for promoter penalties to terminate the QAR period, finding no such requirement in the regulations. The court also determined that Greenberg's actions in facilitating the Bergmanns' transactions were attributable to KPMG, as he was acting within the scope of KPMG's business.

Regarding the gross valuation penalty, the court followed Ninth Circuit precedent (Keller v. Commissioner) that such penalties do not apply when deductions are disallowed for lack of economic substance or tax avoidance, even if overvaluation is involved. The Bergmanns had conceded the invalidity of their deductions on these grounds, so the court found their underpayment was not attributable to a gross valuation misstatement.

Disposition

The court entered a decision for the respondent, holding the Bergmanns liable for the 20% accuracy-related penalty they conceded but not for the 40% gross valuation penalty.

Significance/Impact

Bergmann v. Comm'r clarifies the termination of the QAR filing period under the promoter investigation provision, impacting tax practitioners' strategies for amending returns. It also highlights a circuit split on the applicability of gross valuation penalties to transactions lacking economic substance, with the Ninth Circuit taking a narrower view than other circuits. This decision affects how tax shelters and penalties are litigated, particularly in the Ninth Circuit's jurisdiction.

