Conway v. Commissioner, 137 T. C. 209 (2011)

In Conway v. Commissioner, the U. S. Tax Court ruled on the IRS's collection actions against two former executives of a bankrupt airline. The court held that a levy notice could serve as notice and demand for unpaid trust fund recovery penalties (TFRPs) if it included specific payment demands. However, it found the IRS abused its discretion by sustaining a federal tax lien (NFTL) filing against one executive because the IRS failed to issue timely notice and demand before the filing. This decision underscores the importance of procedural compliance in tax collection and impacts the IRS's enforcement strategies regarding TFRPs.

Parties

Michael J. Conway (Conway), as Petitioner, and Raymond T. Nakano (Nakano), as Petitioner, versus the Commissioner of Internal Revenue, as Respondent. Both Conway and Nakano were involved at the trial level and in subsequent appeals.

Facts

Conway founded and operated National Airlines, Inc. (National), serving as its CEO, president, and chairman of the board during the tax periods at issue. Nakano was National's CFO during the same period. National ceased operations at the end of 2001, leaving unpaid transportation excise taxes for the quarters ending September 30, 2000, September 30, 2001, and December 31, 2001. The IRS assessed TFRPs against Conway and Nakano on March 28, 2006, for National's failure to pay these taxes. Notice of tax due on Form 3552, although dated March 28, 2006, was not issued until June 6, 2006. On May 22, 2006, the IRS sent Nakano a levy notice, which included a demand for payment. On May 18, 2006, the IRS sent Conway a letter stating that it was attempting to collect unpaid taxes, but it did not specify the amounts or types of taxes. On May 26, 2006, the IRS filed an NFTL against Conway's property.

Procedural History

After the TFRP assessments, Conway and Nakano requested a Collection Due Process (CDP) hearing to contest the IRS's proposed levy and NFTL filing. The IRS Appeals Office sustained the proposed levy against Nakano and the NFTL filing against Conway. Both petitioners timely filed petitions with the U. S. Tax Court to review the IRS Appeals' determinations under 26 U. S. C. § 6330(d). The Tax Court consolidated the cases for trial, briefing, and opinion.

Issue(s)

Whether the IRS Appeals Office abused its discretion by sustaining the NFTL filing against Conway and the proposed levy against Nakano, given the IRS's failure to issue notice and demand for payment within 60 days of the TFRP assessments as required by 26 U. S. C. § 6303(a)?

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Rule(s) of Law

Under 26 U. S. C. § 6303(a), the IRS must issue notice and demand for payment within 60 days after assessing any tax, including TFRPs. The notice must state the amount of the unpaid tax and demand payment. According to 26 C. F. R. § 301. 6303-1(a), failure to give notice within 60 days does not invalidate the notice. Section 6321 imposes a federal tax lien on all property and rights to property of a person liable to pay any tax after demand has been made and the person neglects or refuses to pay. Section 6331(a) authorizes the IRS to levy on a person's property if the person liable to pay any tax neglects or refuses to pay within 10 days after notice and demand. Section 6330 requires the IRS to verify that legal and procedural requirements have been met before sustaining a proposed levy or NFTL filing.

Holding

The Tax Court held that the IRS Appeals Office did not abuse its discretion in sustaining the proposed levy against Nakano because the levy notice issued to him satisfied the requirements of 26 U. S. C. § 6303. However, the court found that the IRS abused its discretion in sustaining the NFTL filing against Conway because the IRS did not issue timely notice and demand for payment before filing the NFTL, as required by 26 U. S. C. § 6303(a).

Reasoning

The court reasoned that the levy notice sent to Nakano on May 22, 2006, constituted valid notice and demand under § 6303 because it listed the type and amount of unpaid tax for each period, explicitly demanded payment, and was sent within 60 days of the assessments. The court relied on cases like Hughes v. United States, which held that the form of the notice is irrelevant as long as it provides the required information. Regarding Conway, the court found that the IRS's letter dated May 18, 2006, did not constitute valid notice and demand because it did not specify the amounts, types, or periods of the unpaid taxes. The court rejected the IRS's argument that Conway's role as CEO provided him with constructive notice, citing Jersey Shore State Bank v. United States, which was inapplicable to assessable penalties like TFRPs. The court also found that the NFTL filing against Conway was premature because it predated the issuance of the Forms 3552, which constituted valid notice and demand. The court concluded that the IRS Appeals Office's verification that all legal and procedural requirements had been met was incorrect, leading to an abuse of discretion in sustaining the NFTL filing.

Disposition

The Tax Court entered decisions sustaining the proposed levy against Nakano and finding that the IRS abused its discretion in sustaining the NFTL filing against Conway, directing the IRS to withdraw the NFTL.

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Significance/Impact

This case highlights the critical importance of timely notice and demand in the IRS's collection process for TFRPs. It clarifies that a levy notice can serve as notice and demand if it meets statutory requirements but emphasizes that the IRS must adhere to procedural timelines before filing an NFTL. The decision may influence IRS practices and taxpayer defenses in collection actions, reinforcing the need for strict compliance with statutory requirements. Subsequent courts have cited Conway in cases involving similar issues of notice and demand, affirming its doctrinal significance in tax collection law.

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