***Hinerfeld v. Commissioner, 139 T. C. 277 (2012)***

In Hinerfeld v. Commissioner, the U. S. Tax Court ruled that communications between the IRS Appeals Office and Area Counsel regarding a taxpayer's offer-in-compromise (OIC) were not prohibited ex parte communications. The court also upheld the IRS's rejection of the taxpayer's OIC, finding no abuse of discretion. This decision clarifies the scope of permissible communications within the IRS and the standards for reviewing OICs, impacting how taxpayers and their counsel approach settlement negotiations with the IRS.

**Parties**

Norman Hinerfeld, the petitioner, sought review of the IRS's determination to proceed with a levy action. The respondent was the Commissioner of Internal Revenue.

**Facts**

Norman Hinerfeld was assessed trust fund recovery penalties totaling $471,696 for unpaid employment taxes of Thermacon Industries, Inc. , where he was a responsible person. After receiving a Final Notice of Intent to Levy, Hinerfeld requested a Collection Due Process (CDP) hearing and submitted an offer-in-compromise (OIC) of $10,000, later amended to $74,857. The settlement officer recommended acceptance of the amended OIC, but Area Counsel, upon review, discovered a pending lawsuit (Multi-Glass Atlantic, Inc. v. Alnor Assocs. , LLC) alleging fraudulent conveyance of Thermacon's assets by Hinerfeld. Area Counsel recommended rejection of the OIC, and the Appeals Team Manager agreed, rejecting the OIC and proceeding with the levy.

**Procedural History**

The IRS issued a Final Notice of Intent to Levy to Hinerfeld, who requested a CDP hearing and submitted an OIC. The settlement officer recommended acceptance, but after Area Counsel's review and recommendation to reject, the Appeals Team Manager rejected the OIC. Hinerfeld filed a timely petition with the U. S. Tax Court, which reviewed the case for abuse of discretion, considering the communications between Appeals and Area Counsel for the first time in posttrial briefs.

**Issue(s)**

Whether communications between the IRS Office of Appeals and Area Counsel regarding Hinerfeld's amended OIC constituted prohibited ex parte communications?

Whether the IRS Office of Appeals abused its discretion in rejecting Hinerfeld's amended OIC and proceeding with the proposed levy?

© 2025 SCOTUSreports.com. All rights reserved. 

## Rule(s) of Law

The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998) directed the Commissioner to develop a plan to restrict ex parte communications between Appeals employees and other IRS employees to ensure Appeals' independence. Revenue Procedure 2000-43 provides guidelines on permissible and prohibited ex parte communications. Section 7122(b) of the Internal Revenue Code mandates that the General Counsel or his delegate review compromises of tax liabilities over $50,000. The Internal Revenue Manual (IRM) provides that Counsel must determine whether fraudulent conveyance issues have been properly resolved when reviewing OICs based on doubt as to collectibility.

## Holding

The U. S. Tax Court held that communications between the IRS Office of Appeals and Area Counsel regarding Hinerfeld's amended OIC were not prohibited ex parte communications under RRA 1998 and Revenue Procedure 2000-43. The court also held that the IRS Office of Appeals did not abuse its discretion in rejecting Hinerfeld's amended OIC and proceeding with the proposed levy.

## Reasoning

The court reasoned that the communications between Appeals and Area Counsel were necessary to comply with the statutory requirement of Section 7122(b) for General Counsel review of compromises over $50,000. The court found that the communications did not fall within the limitations prescribed by Revenue Procedure 2000-43, as Area Counsel had not previously advised the employees who made the determination under review, and the Appeals Team Manager, not the settlement officer, made the final decision after exercising independent judgment. The court also noted that the IRM specifically allows Counsel to reexamine facts related to fraudulent conveyance issues in OICs based on doubt as to collectibility. The court rejected Hinerfeld's argument that Area Counsel's factual investigation constituted prohibited ex parte communications, finding that such investigations are contemplated by the IRM. Regarding abuse of discretion, the court found that the Appeals Team Manager's decision to reject the OIC was supported by substantial evidence of a possible fraudulent conveyance and Hinerfeld's inconsistent representations, and was not an abuse of discretion given the statutory time constraints and the taxpayer's rejection of the alternative of placing his account in currently not collectible status.

## Disposition

The U. S. Tax Court entered a decision for the respondent, upholding the IRS's rejection of Hinerfeld's amended OIC and the decision to proceed with the proposed levy.

© 2025 SCOTUSreports.com. All rights reserved. 

**Significance/Impact**

This case clarifies that communications between the IRS Office of Appeals and Area Counsel necessary for compliance with statutory review requirements are not prohibited ex parte communications. It also underscores the importance of Counsel's review of fraudulent conveyance issues in OICs based on doubt as to collectibility, and the deference given to the IRS's exercise of discretion in such cases. The decision impacts how taxpayers and their counsel approach settlement negotiations with the IRS, particularly in cases involving large liabilities and potential fraudulent conveyances.

© 2025 SCOTUSreports.com. All rights reserved. 