Deborah L. Smith v. Commissioner of Internal Revenue, 140 T. C. 48 (2013)

In Smith v. Commissioner, the U. S. Tax Court ruled that a Canadian resident, temporarily in the U. S. when a tax deficiency notice was mailed, was entitled to 150 days to file a petition due to her status as a person outside the U. S. The decision emphasizes the court's broad interpretation of the 150-day rule, allowing foreign residents additional time to respond despite temporary U. S. presence, and underscores the significance of residency in determining applicable filing periods.

Parties

Deborah L. Smith, the Petitioner, filed a petition against the Commissioner of Internal Revenue, the Respondent, in the United States Tax Court. The case was docketed as No. 12605-08.

Facts

In August 2007, Deborah L. Smith moved from San Francisco, California, to Vancouver, British Columbia, Canada, with her two daughters. They became permanent residents of Canada, enrolled in a local school, and Smith obtained a Canadian driver's license. Despite relocating, Smith maintained ownership of her San Francisco home and a post office box there. In December 2007, she returned to San Francisco to oversee the relocation of her furniture to Canada. On December 27, 2007, while Smith was in San Francisco, the Commissioner mailed a notice of deficiency to her San Francisco post office box for her 2000 tax year, asserting a deficiency of $8,911,858, a $2,044,590 addition to tax under section 6651(a)(1), and a $1,782,372 accuracy-related penalty under section 6662(a). The notice was delivered on December 31, 2007, but Smith did not retrieve it before returning to Canada on January 8, 2008. She received a copy of the notice on May 2, 2008, and filed a petition with the Tax Court on May 23, 2008, 148 days after the mailing date.

Procedural History

The Commissioner moved to dismiss Smith's petition for lack of jurisdiction, arguing that it was filed beyond the 90-day period specified in section 6213(a) of the Internal Revenue Code. Smith objected, contending that she was entitled to a 150-day period because the notice was addressed to a person outside the United States. The Tax Court reviewed the case and denied the Commissioner's motion, holding that Smith's petition was timely filed within the 150-day period.

Issue(s)

Whether, under section 6213(a) of the Internal Revenue Code, a taxpayer who is a resident of Canada but was temporarily present in the United States when the notice of deficiency was mailed and delivered is entitled to 150 days, rather than 90 days, to file a petition with the Tax Court?

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Rule(s) of Law

Section 6213(a) of the Internal Revenue Code states that a taxpayer has 90 days, or 150 days if the notice is addressed to a person outside the United States, after the mailing of the notice of deficiency to file a petition with the Tax Court. The court has consistently applied a broad and practical construction of this section to retain jurisdiction over cases where taxpayers experience delays in receiving notices due to their absence from the country. *See* Lewy v. Commissioner, 68 T. C. 779, 781 (1977) (quoting King v. Commissioner, 51 T. C. 851, 855 (1969)); *see also* Looper v. Commissioner, 73 T. C. 690, 694 (1980).

Holding

The Tax Court held that Smith, as a Canadian resident, was entitled to 150 days to file her petition, despite being temporarily present in the United States when the notice of deficiency was mailed and delivered. The court's decision was based on its interpretation that the 150-day rule applies to foreign residents who are temporarily in the United States and experience delays in receiving the notice.

Reasoning

The court's reasoning was grounded in a long line of precedents that have broadly interpreted the phrase "addressed to a person outside the United States" in section 6213(a). The court emphasized that this interpretation is intended to prevent hardship to taxpayers who, due to their foreign residency, are likely to experience delays in receiving notices. The court referenced *Hamilton v. Commissioner*, 13 T. C. 747 (1949), which established that foreign residents are entitled to the 150-day period, even if they are temporarily in the United States when the notice is mailed. Subsequent cases, including *Lewy v. Commissioner*, 68 T. C. 779 (1977), and *Degill Corp. v. Commissioner*, 62 T. C. 292 (1974), further supported the application of the 150-day rule to foreign residents who are temporarily in the United States but ultimately receive the notice abroad. The court also addressed counter-arguments from dissenting opinions, which focused on the taxpayer's physical location at the time of mailing and delivery. However, the majority opinion rejected these arguments, affirming that the taxpayer's residency and the potential for delayed receipt of the notice are more significant factors in determining the applicable filing period.

Disposition

The Tax Court denied the Commissioner's motion to dismiss for lack of jurisdiction and held that Smith's petition was timely filed within the 150-day period allowed under section 6213(a).

Significance/Impact

The decision in *Smith v. Commissioner* reaffirms the Tax Court's broad

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interpretation of section 6213(a), emphasizing the importance of foreign residency in determining the applicable filing period for petitions challenging tax deficiencies. This ruling provides clarity and protection for foreign residents who may be temporarily in the United States, ensuring they have adequate time to respond to deficiency notices. The case also highlights the court's commitment to statutory interpretation that favors the retention of jurisdiction, allowing taxpayers to have their cases heard without undue hardship. Subsequent courts and practitioners must consider this precedent when assessing the filing deadlines for foreign residents, ensuring that the potential for delayed receipt of notices is adequately addressed.

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