Moosally v. Commissioner, 142 T. C. No. 10 (U. S. Tax Court 2014)

In Moosally v. Commissioner, the U. S. Tax Court ruled that a taxpayer was entitled to a new Collection Due Process (CDP) hearing because the assigned Appeals Officer had prior involvement with the taxpayer's rejected Offer in Compromise (OIC). This decision underscores the statutory requirement for an impartial officer in CDP hearings and reinforces the separation of tax liability determination from collection enforcement. The case is significant for clarifying the scope of the impartiality requirement under IRC section 6320(b)(3).

Parties

Patricia A. Moosally, as Petitioner, sought review of the Commissioner of Internal Revenue's determination to proceed with collection of her unpaid tax liabilities. The Commissioner, as Respondent, represented the interests of the Internal Revenue Service (IRS) in this case.

Facts

Patricia A. Moosally had unpaid trust fund recovery penalties (TFRPs) for periods ending March 31 and September 30, 2000, and an unpaid income tax liability for her 2008 tax year. Moosally submitted an Offer in Compromise (OIC) to settle these liabilities, which was rejected by the IRS. She appealed this rejection, and Appeals Officer Barbara Smeck was assigned to review the OIC. Meanwhile, the IRS filed a Notice of Federal Tax Lien (NFTL) and sent Moosally a Letter 3172, notifying her of her right to a CDP hearing under IRC section 6320. Moosally requested a CDP hearing, and Appeals Officer Donna Kane was initially assigned to conduct it. However, before the CDP hearing could be conducted, Moosally's case was transferred from Kane to Smeck, who had already been involved in reviewing Moosally's OIC appeal. Smeck sustained the rejection of Moosally's OIC and the filing of the NFTL.

Procedural History

Moosally's OIC was rejected by the IRS Centralized OIC Unit, and she appealed the rejection to the Appeals Office. Appeals Officer Smeck was assigned to review the OIC appeal. Subsequently, the IRS filed an NFTL and issued a Letter 3172, prompting Moosally to request a CDP hearing. Initially, Appeals Officer Kane was assigned to conduct the CDP hearing, but the case was transferred to Smeck, who was already reviewing Moosally's OIC appeal. Smeck issued notices of determination sustaining the filing of the NFTL and the rejection of the OIC. Moosally then petitioned the U. S. Tax Court for review of these determinations.

Issue(s)

Whether Appeals Officer Smeck was an impartial officer pursuant to IRC section 6320(b)(3) and section 301. 6320-1(d)(2), Proced. & Admin. Regs. , given her prior

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involvement with Moosally's OIC appeal?

Rule(s) of Law

IRC section 6320(b)(3) requires that a CDP hearing be conducted by an impartial officer or employee of the Appeals Office who has had no prior involvement with respect to the unpaid tax specified in the notice. Section 301. 6320-1(d)(2), Proced. & Admin. Regs. , further defines "prior involvement" as participation or involvement in a matter (other than a CDP hearing) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice.

Holding

The U. S. Tax Court held that Appeals Officer Smeck was not an impartial officer pursuant to IRC section 6320(b)(3) and section 301. 6320-1(d)(2), Proced. & Admin. Regs. , because of her prior involvement with Moosally's OIC appeal. Consequently, Moosally was entitled to a new CDP hearing before an impartial Appeals Officer.

Reasoning

The court's reasoning focused on the interpretation and application of IRC section 6320(b)(3) and the related regulations. The court found that Smeck's involvement in reviewing Moosally's OIC appeal constituted "prior involvement" with respect to the unpaid tax liabilities for the same periods involved in the CDP hearing. This involvement was not merely peripheral but was the subject of a separate administrative proceeding. The court rejected the IRS's argument that Smeck's involvement did not constitute "prior involvement" because she had not yet issued a determination regarding the OIC. The court emphasized that the regulations do not require a determination to have been issued for prior involvement to exist. Additionally, the court distinguished this case from Cox v. Commissioner, noting that the facts and the nature of the prior involvement were different. The court also rejected the IRS's contention that combining OIC appeals with CDP hearings would benefit taxpayers by allowing judicial review of OICs submitted outside the CDP context, stating that such policy considerations could not override the clear statutory language requiring an impartial officer.

Disposition

The U. S. Tax Court remanded the case to the IRS Appeals Office for a new CDP hearing before an impartial officer.

Significance/Impact

Moosally v. Commissioner is significant for clarifying the scope of the impartiality requirement in CDP hearings under IRC section 6320(b)(3). It reinforces the principle that the Appeals Officer conducting a CDP hearing must have no prior involvement with the taxpayer's case, even if that involvement pertains to the same

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tax liabilities but in a different administrative context, such as an OIC appeal. This decision ensures the separation of tax liability determination from collection enforcement and upholds the integrity of the CDP hearing process. It also highlights the limited jurisdiction of the Tax Court, which cannot expand to review OIC rejections outside the context of a CDP hearing. The ruling may impact how the IRS assigns cases to Appeals Officers to ensure compliance with the impartiality requirement, potentially leading to more structured case management practices within the Appeals Office.

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