Moosally v. Commissioner, 142 T. C. 183 (U. S. Tax Court 2014)

In Moosally v. Commissioner, the U. S. Tax Court ruled that an IRS Appeals Officer was not impartial in a Collection Due Process (CDP) hearing because of prior involvement with the taxpayer's rejected Offer in Compromise (OIC). This decision reinforces the statutory requirement for an impartial officer in CDP hearings, impacting how the IRS must handle such proceedings to ensure fairness and independence in reviewing taxpayer disputes over tax liabilities and collection actions.

Parties

Patricia A. Moosally, as the Petitioner, sought review of the IRS Commissioner's determination regarding her tax liabilities. The Commissioner of Internal Revenue was the Respondent.

Facts

Patricia A. Moosally had unpaid trust fund recovery penalties for the tax periods ending March 31 and September 30, 2000, and an unpaid federal income tax liability for her 2008 tax year. Moosally submitted an Offer in Compromise (OIC) to the IRS, proposing to settle her liabilities for $200, which was rejected. She then appealed the rejection to the IRS Appeals Office, where Settlement Officer Barbara Smeck was assigned to review her OIC. Meanwhile, the IRS filed a Notice of Federal Tax Lien (NFTL) for the periods in issue and sent Moosally a Letter 3172, notifying her of her right to a Collection Due Process (CDP) hearing. Moosally requested a CDP hearing, which was initially assigned to Settlement Officer Donna Kane. However, the case was later transferred to Smeck, who was already reviewing Moosally's OIC appeal.

Procedural History

Moosally's OIC was initially reviewed and rejected by the IRS Centralized OIC Unit. She appealed the rejection to the IRS Appeals Office, and Settlement Officer Smeck was assigned to review it. Following the filing of an NFTL and issuance of Letter 3172, Moosally requested a CDP hearing, initially assigned to Settlement Officer Kane. The CDP hearing was then transferred to Smeck. Smeck sustained the rejection of the OIC and the filing of the NFTL. Moosally petitioned the U. S. Tax Court for review, arguing that Smeck was not an impartial officer due to her prior involvement with the OIC appeal.

Issue(s)

Whether the IRS Appeals Officer assigned to Moosally's CDP hearing was an impartial officer under I. R. C. § 6320(b)(3) and Treas. Reg. § 301. 6320-1(d)(2)?

Rule(s) of Law

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I. R. C. § 6320(b)(3) requires that a CDP hearing be conducted by an impartial officer or employee of the IRS Appeals Office who has had no prior involvement with respect to the unpaid tax specified in the CDP notice. Treas. Reg. § 301. 6320-1(d)(2) defines prior involvement as participation or involvement in a matter (other than a CDP hearing) related to the tax and tax period shown on the CDP notice.

Holding

The U. S. Tax Court held that Settlement Officer Smeck was not an impartial officer under I. R. C. § 6320(b)(3) and Treas. Reg. § 301. 6320-1(d)(2) because she had prior involvement with Moosally's unpaid tax liabilities for the periods in issue before being assigned to handle the CDP hearing for the same tax and periods. Consequently, Moosally was entitled to a new CDP hearing before an impartial officer.

Reasoning

The court reasoned that Smeck's review of Moosally's rejected OIC for nearly three months before being assigned to handle the CDP hearing constituted prior involvement. The court rejected the respondent's argument that Smeck was impartial because she had not yet issued a determination on the OIC appeal, stating that prior involvement does not require the issuance of a determination. The court distinguished this case from *Cox v. Commissioner*, noting that Smeck's involvement with the OIC appeal was not peripheral but was the subject of a separate administrative proceeding involving the same tax periods as the CDP hearing. The court also clarified that the statutory and regulatory language does not permit simultaneous review of an OIC appeal and a CDP hearing by the same officer without violating the impartiality requirement. The court emphasized the importance of maintaining the integrity of the CDP hearing process to ensure fairness to taxpayers, concluding that Moosally was entitled to a new hearing before 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

The decision in *Moosally v. Commissioner* reinforces the strict application of the impartiality requirement in CDP hearings as mandated by I. R. C. § 6320(b)(3). It establishes that prior involvement in a non-CDP matter concerning the same tax and periods disqualifies an Appeals Officer from handling a subsequent CDP hearing, ensuring that taxpayers receive a fair and unbiased review of their collection alternatives. This ruling has significant implications for IRS practices, necessitating clear separation between OIC appeals and CDP hearings to comply with statutory

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requirements. Subsequent cases have cited *Moosally* to uphold the integrity of the CDP process, impacting how the IRS manages appeals and hearings related to tax collection.

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