Whistleblower 11332-13W v. Commissioner of Internal Revenue, 142 T. C. 396 (2014)

The U. S. Tax Court ruled that it has jurisdiction over whistleblower award determinations when information is provided both before and after the enactment of I. R. C. § 7623(b) in 2006. Whistleblower 11332-13W's continuous provision of information regarding a tax fraud scheme to the IRS and DOJ, which led to over $30 million in recovered taxes, allowed the court to deny the Commissioner's motion to dismiss for lack of jurisdiction. This decision expands the scope of judicial review for whistleblower claims, reinforcing the legal protections for whistleblowers who aid in tax enforcement.

Parties

Whistleblower 11332-13W, as Petitioner, filed the case against the Commissioner of Internal Revenue, as Respondent, in the United States Tax Court.

Facts

Whistleblower 11332-13W (W) was employed by an entity involved in a tax fraud scheme. After raising concerns about the scheme, W faced intimidation and was subsequently terminated. W initially attempted to report the scheme in 2005 but succeeded in gaining government interest in June 2006. W provided information to the Department of Justice (DOJ) and Internal Revenue Service (IRS) from June 2006 through the fall of 2009, which formed the basis for the government's action against the target taxpayers. W's involvement in the investigation posed risks to W and W's family, including receiving threats from the targets. In 2008, W filed a Form 211 for an award under I. R. C. § 7623(a), and resubmitted in 2011 seeking an award under § 7623(b). The government recovered over $30 million through a settlement with one of the targets. The IRS Whistleblower Office granted W a discretionary award under § 7623(a) but denied the request under § 7623(b).

Procedural History

W filed a timely petition in the U. S. Tax Court seeking review of the IRS's award determination. The Commissioner moved to dismiss the case for lack of jurisdiction, arguing that the information provided by W before December 20, 2006, the effective date of § 7623(b), was used in the government's action. W opposed the motion, asserting that W provided information both before and after December 20, 2006. The Tax Court, considering W's allegations as true for the purposes of the motion, denied the Commissioner's motion to dismiss.

Issue(s)

Whether the U. S. Tax Court has jurisdiction to review the Commissioner's whistleblower award determination when the whistleblower provided information both before and after the effective date of I. R. C. § 7623(b), enacted on December

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20, 2006?

Rule(s) of Law

I. R. C. § 7623(b) mandates the payment of nondiscretionary whistleblower awards when the Commissioner proceeds with an action based on information provided by the whistleblower. The Tax Court has exclusive jurisdiction over appeals of such award determinations. I. R. C. § 7623(b)(4) provides for judicial review of nondiscretionary award determinations.

Holding

The U. S. Tax Court has jurisdiction to review the Commissioner's whistleblower award determination where the whistleblower alleged that they provided information to the IRS and DOJ both before and after the effective date of I. R. C. § 7623(b), enacted on December 20, 2006.

Reasoning

The court considered the allegations in W's petition as true for the purposes of deciding the motion to dismiss. The court analyzed the intent of the Tax Relief and Health Care Act of 2006 (TRHCA), which amended § 7623 to provide judicial review of nondiscretionary whistleblower awards. The court found persuasive the rationale in *Dacosta v. United States*, where the Court of Federal Claims determined that the Tax Court had exclusive jurisdiction over claims involving information provided before and after the enactment of TRHCA. The court noted that W's post-December 20, 2006, information was not merely confirmatory but formed the basis and details of the government's action against the targets. The court concluded that if W's allegations were proven at trial, they would establish that the Commissioner proceeded using information provided after December 20, 2006, thus entitling W to judicial review of the award determination. The court rejected the Commissioner's argument that only pre-December 20, 2006, information was used, as it was a factual dispute to be resolved at trial, not on a motion to dismiss.

Disposition

The court denied the Commissioner's motion to dismiss for lack of jurisdiction, thereby allowing the case to proceed to trial.

Significance/Impact

This decision expands the jurisdictional reach of the U. S. Tax Court in reviewing whistleblower award determinations under I. R. C. § 7623(b). It underscores the importance of continuous cooperation between whistleblowers and government agencies in tax enforcement, providing whistleblowers with greater legal protections and access to judicial review. Subsequent cases have cited this ruling to affirm the Tax Court's jurisdiction over similar claims, reinforcing the court's role in

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overseeing the whistleblower program. The decision also highlights the complexities involved in determining the timing and nature of information provided by whistleblowers, which may impact future interpretations of the whistleblower statute.

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