***Eichler v. Commissioner, 143 T. C. 30, 2014 U. S. Tax Ct. LEXIS 32, 143 T. C. No. 2 (T. C. 2014)***

In Eichler v. Commissioner, the U. S. Tax Court upheld the IRS's issuance of notices of intent to levy during a pending installment agreement request, clarifying that such notices are not prohibited by law. The court remanded the case for further review on the IRS's requirement of an $8,520 downpayment for the installment agreement, citing potential economic hardship and factual disputes. This ruling provides critical guidance on the IRS's collection practices and the procedural rights of taxpayers.

**Parties**

Renald Eichler, the Petitioner, filed a case against the Commissioner of Internal Revenue, the Respondent, in the United States Tax Court.

**Facts**

Renald Eichler was assessed trust fund recovery penalties for the fourth quarter of 2008, the first and second quarters of 2009, amounting to $89,760, $82,725, and $16,889, respectively. On April 11, 2011, Eichler's representative submitted a request for a partial pay installment agreement of $350 per month, accompanied by a completed Form 433-A and supporting financial documentation. The IRS received this request on April 28, 2011. Despite the IRS's obligation to input the request into its system within 24 hours, it was not entered until June 6, 2011. On May 9, 2011, the IRS sent Eichler three Letters CP 90, notices of intent to levy, for the unpaid penalties. Eichler timely requested a collection due process (CDP) hearing, seeking withdrawal of the notices and approval of his installment agreement. During the CDP hearing, the IRS settlement officer proposed an installment agreement requiring an $8,520 downpayment, which Eichler rejected due to potential economic hardship. The IRS's final determination sustained the proposed levy and rejected Eichler's request to withdraw the notices of intent to levy.

**Procedural History**

Eichler sought review of the IRS's determination in the U. S. Tax Court under section 6330(d). The case was presented on cross-motions for summary judgment. The Tax Court reviewed whether the IRS abused its discretion in refusing to rescind the notices of intent to levy and in requiring the $8,520 downpayment as a condition of the installment agreement.

**Issue(s)**

Whether section 6331(k)(2) precludes the IRS from issuing notices of intent to levy after a taxpayer submits an offer for an installment agreement?

Whether the IRS abused its discretion in determining that Eichler should make an

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$8,520 downpayment as a condition of his installment agreement?

**Rule(s) of Law**

Section 6331(k)(2) states that "No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax. . . during the period that an offer by such person for an installment agreement under section 6159 for payment of such unpaid tax is pending with the Secretary. "

Section 301. 6331-4(b)(1) of the regulations provides that while levy is prohibited, "The IRS may take actions other than levy to protect the interests of the Government. "

Section 6159 authorizes the Secretary to enter into an installment agreement upon determining that it would facilitate full or partial collection of the tax liability.

**Holding**

The Tax Court held that section 6331(k)(2) did not preclude the IRS from issuing the notices of intent to levy after Eichler submitted his offer for an installment agreement. The court further held that the IRS's determination not to rescind the notices of intent to levy was not an abuse of discretion. However, the court remanded the case for further proceedings regarding the appropriateness of the $8,520 downpayment as a condition of the installment agreement, due to the lack of clarity on the economic hardship issue.

**Reasoning**

The court reasoned that section 6331(k)(2) specifically prohibits the IRS from making a levy during the pendency of an installment agreement offer, but it does not bar the issuance of notices of intent to levy. The court cited the regulations under section 301. 6331-4(b)(1), which allow the IRS to take actions other than levy to protect its interests, indicating that a notice of intent to levy is preliminary to a collection action and not barred by the statute. The court also considered the Internal Revenue Manual (IRM) provisions, noting that while the IRM directs the Collection Division to rescind notices in certain circumstances, it does not require Appeals to do so, and thus, the IRS did not abuse its discretion by following the IRM provisions applicable to Appeals.

Regarding the $8,520 downpayment, the court found that the record did not allow for meaningful review of the IRS's determination. The court noted that Eichler's representative had asserted potential economic hardship due to the couple's age and limited financial resources. The court concluded that the IRS's failure to expressly consider these issues warranted a remand for further clarification and consideration of any new collection alternatives Eichler might propose.

**Disposition**

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The Tax Court denied the parties' cross-motions for summary judgment and remanded the case to the IRS Appeals for further proceedings concerning the $8,520 downpayment condition of the installment agreement.

**Significance/Impact**

Eichler v. Commissioner provides important guidance on the IRS's collection practices, particularly the issuance of notices of intent to levy during pending installment agreement requests. The decision clarifies that such notices are not prohibited by law, distinguishing them from actual levies. The remand on the issue of the downpayment condition emphasizes the importance of considering potential economic hardship in determining installment agreement terms. This case may influence future IRS practices in handling similar taxpayer requests and could impact how taxpayers negotiate installment agreements to avoid economic hardship.

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