Lippolis v. Commissioner, 143 T. C. 393 (2014)

In Lippolis v. Commissioner, the U. S. Tax Court clarified that the $2 million threshold in I. R. C. § 7623(b)(5)(B) for whistleblower awards is an affirmative defense, not a jurisdictional requirement. This ruling allows whistleblowers to have their cases heard even if the amount in dispute is less than $2 million, shifting the burden to the IRS to prove this defense. The decision enhances whistleblower protections and encourages reporting of tax violations by ensuring broader access to judicial review.

Parties

Robert Lippolis, Petitioner, filed a whistleblower claim against the Commissioner of Internal Revenue, Respondent, before the United States Tax Court, Docket No. 18172-12W.

Facts

Robert Lippolis filed a whistleblower claim with the IRS Whistleblower Office on August 24, 2007, alleging underreporting of federal income tax by an individual taxpayer and certain flowthrough entities. The IRS Examination Division investigated the claim, resulting in an assessment and collection of $844,746 in taxes and interest from the taxpayer. The Whistleblower Office determined that Lippolis was not eligible for an award under I. R. C. § 7623(b) due to the amount in dispute being less than $2 million, but was eligible for a discretionary award under I. R. C. § 7623(a), which amounted to $126,712. Lippolis received a letter on June 12, 2012, stating the approved award under § 7623(a) as full payment of his claim.

Procedural History

Lippolis filed a whistleblower action in the United States Tax Court under I. R. C. § 7623(b)(4) to appeal the Whistleblower Office’s determination. The Commissioner moved to dismiss the case for lack of jurisdiction, arguing that Lippolis did not meet the $2 million threshold requirement under § 7623(b)(5)(B). The Tax Court denied the motion to dismiss, holding that the $2 million requirement is an affirmative defense, not a jurisdictional bar. The court allowed the Commissioner 60 days to file a motion for leave to amend the answer to raise the § 7623(b)(5)(B) affirmative defense.

Issue(s)

Whether the $2 million threshold requirement under I. R. C. § 7623(b)(5)(B) is a jurisdictional bar that prevents the Tax Court from hearing a whistleblower case?

Rule(s) of Law

I. R. C. § 7623(b)(4) grants the Tax Court jurisdiction over determinations regarding

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awards under § 7623(b). I. R. C. § 7623(b)(5)(B) states that an award under § 7623(b) shall not be made unless the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $2 million. The Supreme Court has established a “bright line” rule that statutory provisions affecting jurisdiction must be clearly stated by Congress as jurisdictional.

Holding

The Tax Court held that the $2 million threshold requirement under I. R. C. § 7623(b)(5)(B) is not a jurisdictional bar but an affirmative defense that must be pleaded and proven by the Commissioner.

Reasoning

The court analyzed the text, context, and legislative history of § 7623(b)(5)(B) and found no clear indication that Congress intended it to be a jurisdictional requirement. The court noted that § 7623(b)(4) separately grants jurisdiction to the Tax Court over whistleblower award determinations, without conditioning it on the $2 million threshold. The court also considered the practicality and fairness of assigning the burden of proof on the $2 million requirement to the Commissioner, who has better access to the relevant records. The court concluded that treating the $2 million threshold as an affirmative defense aligns with the statutory framework and Supreme Court guidance on jurisdiction, ensuring whistleblowers are not unfairly barred from court review. The court’s decision was influenced by the policy goal of encouraging whistleblower reports by not limiting judicial access based on the amount in dispute.

Disposition

The Tax Court denied the Commissioner’s motion to dismiss for lack of jurisdiction and issued an order allowing the Commissioner 60 days to file a motion for leave to amend the answer to raise the § 7623(b)(5)(B) affirmative defense.

Significance/Impact

The Lippolis decision is significant for expanding whistleblower access to judicial review, regardless of the amount in dispute. By classifying the $2 million threshold as an affirmative defense rather than a jurisdictional requirement, the court has shifted the burden to the IRS to prove the defense, potentially increasing the number of whistleblower cases that proceed to court. This ruling encourages whistleblowers to come forward by lowering the procedural hurdles to judicial review and aligns with broader trends in federal courts to limit the use of jurisdictional bars. The decision may lead to more whistleblower claims being litigated, impacting IRS enforcement strategies and whistleblower incentives.

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