Lippolis v. Commissioner, 143 T. C. No. 20 (2014)

In Lippolis v. Commissioner, the U. S. Tax Court clarified that the $2 million threshold required for a whistleblower award under I. R. C. section 7623(b) is not a jurisdictional bar but an affirmative defense. This ruling impacts how whistleblowers can pursue claims in court, allowing them to contest IRS determinations even when the amount in dispute falls below the threshold. The decision underscores the court's jurisdiction to review whistleblower award decisions and emphasizes the procedural steps necessary for the IRS to assert the $2 million defense.

Parties

Robert Lippolis, as the Petitioner, initiated this whistleblower proceeding against the Commissioner of Internal Revenue, the Respondent, in the United States Tax Court under Docket No. 18172-12W.

Facts

Robert Lippolis filed a whistleblower claim with the IRS on August 24, 2007, alleging underreported federal income tax by an individual taxpayer and associated flowthrough entities. Following the claim, the IRS Examination Division audited the target's returns, resulting in an assessment and collection of $844,746 in tax and interest. The Whistleblower Office concluded that Lippolis was eligible for an award under I. R. C. section 7623(a) but not under section 7623(b) due to the amount in dispute not exceeding $2 million. The IRS informed Lippolis of an approved award of $126,712 under section 7623(a) via a letter dated June 12, 2012.

Procedural History

Lippolis filed a petition in the U. S. Tax Court to contest the IRS's determination regarding his eligibility for an award under I. R. C. section 7623(b). The Commissioner moved to dismiss the case for lack of jurisdiction, asserting that the amount in dispute did not meet the $2 million threshold required under section 7623(b)(5)(B). The court denied the motion, concluding that the $2 million requirement was an affirmative defense, not a jurisdictional limit, and allowed the Commissioner time to amend the answer to include this defense.

Issue(s)

Whether the $2 million threshold requirement in I. R. C. section 7623(b)(5)(B) is jurisdictional, thereby affecting the Tax Court's authority to hear the case?

Rule(s) of Law

Under I. R. C. section 7623(b)(4), the Tax Court has jurisdiction over determinations regarding whistleblower awards under section 7623(b)(1), (2), or (3). Section 7623(b)(5)(B) stipulates that an award under section 7623(b) shall not be made

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unless more than $2 million is in dispute in the action. The Supreme Court has held that statutory provisions affecting jurisdiction must be clearly stated by Congress as such; otherwise, they are treated as nonjurisdictional requirements.

Holding

The $2 million threshold requirement under I. R. C. section 7623(b)(5)(B) is not jurisdictional but an affirmative defense that the Commissioner must plead and prove.

Reasoning

The court's reasoning focused on the legal character of the $2 million requirement, as per Supreme Court precedent. The court analyzed the text and context of section 7623(b)(5)(B), finding no clear indication that Congress intended it to serve as a jurisdictional bar. The court also noted that section 7623(b)(4) explicitly grants jurisdiction over determinations made under section 7623(b), without reference to the $2 million threshold. The court considered the fairness and practicality of assigning the burden of proving the $2 million requirement, concluding that the IRS, not the whistleblower, typically has access to the necessary documentation to establish the amount in dispute. This analysis led to the conclusion that the $2 million requirement should be treated as an affirmative defense, consistent with the principles articulated by the Supreme Court in cases like Arbaugh v. Y & H Corp. and Gonzalez v. Thaler.

Disposition

The Tax Court denied the Commissioner's motion to dismiss for lack of jurisdiction and granted the Commissioner 60 days to file a motion for leave to amend the answer to include the $2 million affirmative defense.

Significance/Impact

Lippolis v. Commissioner has significant implications for whistleblower litigation, clarifying that the $2 million threshold does not bar the Tax Court from reviewing IRS determinations on whistleblower awards. This ruling enhances the ability of whistleblowers to challenge IRS decisions in court, even when the amount in dispute falls below the threshold. It also imposes procedural obligations on the IRS to properly plead and prove the $2 million defense, potentially affecting the strategy and timing of whistleblower cases. The decision reflects a broader judicial trend to carefully distinguish between jurisdictional and nonjurisdictional requirements, thereby impacting how statutory limits are interpreted and applied in federal courts.

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