Lee v. Commissioner, 144 T. C. 40 (U. S. Tax Ct. 2015)

In Lee v. Commissioner, the U. S. Tax Court denied the Commissioner's motion for summary judgment, ruling that a genuine dispute of material fact existed regarding whether the IRS properly served John Chase Lee with notice of trust fund recovery penalties under IRC Section 6672. The court emphasized that proper notice, either through mailing or personal service, is a prerequisite for assessing such penalties. This decision underscores the importance of procedural compliance in tax penalty assessments and the taxpayer's right to challenge the underlying liability if notice procedures are not followed.

Parties

John Chase Lee, the Petitioner, sought review of the Commissioner of Internal Revenue's determination to uphold the filing of a Notice of Federal Tax Lien (NFTL) and a notice of intent to levy. The Commissioner of Internal Revenue was the Respondent, represented by Wendy Dawn Gardner.

Facts

John Chase Lee was intermittently the CEO of Wi-Tron, Inc. , a company that incurred employment tax liabilities during every quarter of 2007 and 2008. On December 18, 2009, a revenue officer met with Lee and requested a 4180 interview to determine if Lee was a responsible person for the employment taxes, but Lee declined, wishing to consult legal counsel. On March 30, 2010, another meeting was held with Lee, the revenue officer, his manager, and Tarlochan Bains, Wi-Tron's COO. The Commissioner claimed that at this meeting, Lee was personally served with Letter 1153, proposing the assessment of trust fund recovery penalties under IRC Section 6672. Lee, however, denied receiving the letter. On July 14, 2010, trust fund recovery penalties were assessed against Lee for all periods of 2007 and 2008.

Procedural History

After the penalties were assessed, the Commissioner issued a Final Notice of Intent to Levy and Notice of Your Right to a Hearing on August 12, 2010, and a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 on August 24, 2010. Lee requested a Collection Due Process (CDP) hearing on September 3, 2010. The Appeals Officer initially sustained the collection action because Lee was not current with his estimated tax payments. Lee petitioned the U. S. Tax Court for review. The court remanded the case for a supplemental hearing to review whether Lee received notice of the intent to assess the penalties and if he was allowed an opportunity to challenge the assessment. After the supplemental hearing, the Appeals Officer determined that Lee had received Letter 1153 and had an opportunity to appeal, which he did not exercise. The Commissioner then moved for summary judgment, which the court denied due to a genuine dispute regarding the service of Letter 1153.

Issue(s)

Whether the Commissioner properly served John Chase Lee with Letter 1153, proposing the assessment of trust fund recovery penalties under IRC Section 6672, either through mailing or personal service?

Rule(s) of Law

Under IRC Section 6672, a person responsible for collecting and paying over employment taxes may be liable for a penalty equal to the total amount of the tax not paid over if they willfully fail to do so. Section 6672(b) requires the IRS to provide notice at least 60 days before assessing the penalty, which can be done by mailing in accordance with IRC Section 6212(b) or by personal service. IRC Sections 6330 and 6320 provide taxpayers with the right to a CDP hearing before the IRS can levy property or file a NFTL. At the CDP hearing, the Appeals Officer must verify that the requirements of applicable law and administrative procedure have been met, including the proper issuance of notice under Section 6672(b).

Holding

The U. S. Tax Court held that there was a genuine dispute of material fact as to whether John Chase Lee was properly served with Letter 1153, thus denying the Commissioner's motion for summary judgment.

Reasoning

The court reasoned that proper notice under IRC Section 6672(b) is a prerequisite for assessing trust fund recovery penalties, and the Appeals Officer must verify that such notice was properly issued. The court emphasized that the issue of whether the notice was properly issued is reviewable under IRC Section 6330(c)(1), regardless of whether the taxpayer raised it at the CDP hearing. The court found that the Commissioner failed to provide sufficient evidence to prove that Lee was personally served with Letter 1153. The court noted that the Integrated Collection System (ICS) Transcript did not contain a contemporaneous entry of service on the date of the meeting, and no signed copy of the Letter 1153 was provided. The court also considered Lee's contention that he did not receive the letter and his history of responding to IRS correspondence, indicating a genuine dispute that required a trial.

Disposition

The U. S. Tax Court denied the Commissioner's motion for summary judgment and ordered a trial to resolve the factual dispute regarding the service of Letter 1153.

Significance/Impact

Lee v. Commissioner reinforces the importance of procedural compliance in the assessment of trust fund recovery penalties under IRC Section 6672. The case highlights that proper notice, whether by mailing or personal service, is a critical requirement that must be verified by the Appeals Officer during a CDP hearing. This decision may encourage taxpayers to challenge assessments if they believe they did not receive proper notice, and it underscores the necessity for the IRS to maintain clear and contemporaneous records of notice service. The ruling also affirms the court's jurisdiction to review verification issues under IRC Section 6330(c)(1), even if not raised by the taxpayer during the administrative process, ensuring that the IRS adheres to legal and administrative procedures before enforcing tax collection actions.

