Gardner v. Commissioner, 145 T. C. No. 6 (2015)

The U. S. Tax Court upheld $47,000 penalties against Fredric and Elizabeth Gardner for promoting an abusive tax shelter involving corporations sole. The court applied collateral estoppel based on a prior injunction, confirming the Gardners' liability under Section 6700 for making false statements about tax benefits. The decision clarifies that Section 6700 penalties are based on the promoter's actions, not the purchaser's reliance, and can be assessed across multiple years for administrative convenience.

Parties

Fredric A. Gardner and Elizabeth A. Gardner, petitioners, v. Commissioner of Internal Revenue, respondent. The Gardners were the petitioners at the trial level before the U. S. Tax Court, having previously been defendants in a related case before the U. S. District Court for the District of Arizona.

Facts

The Gardners, a husband and wife, operated Bethel Aram Ministries (BAM) and promoted a tax avoidance scheme using corporations sole, trusts, and limited liability companies (LLCs). They marketed these arrangements as a means to reduce federal income tax liability, asserting that income assigned to a corporation sole would become nontaxable. The Gardners advised their clients to form an LLC to operate a business, with a trust as the majority member, and to donate a significant portion of the LLC's income to a church for a charitable deduction. They promoted these plans through seminars, a website, and a book written by Mrs. Gardner. The Internal Revenue Service (IRS) investigated the Gardners' activities, which led to the U. S. District Court for the District of Arizona enjoining them from further promoting the scheme. The IRS assessed $47,000 penalties against each Gardner under Section 6700 for promoting an abusive tax shelter, and they challenged these penalties in the Tax Court.

Procedural History

The U. S. District Court for the District of Arizona found that the Gardners had engaged in conduct violating Section 6700 by making false statements about tax benefits and enjoined them from further promotion of their plan. The Gardners failed to pay the assessed penalties, leading the IRS to file a notice of federal tax lien and issue notices of intent to levy. The Gardners requested Collection Due Process (CDP) hearings under Section 6330, where they attempted to challenge the underlying liability. The settlement officers sustained the IRS's collection actions, and the Gardners appealed to the U. S. Tax Court. The Tax Court consolidated the cases for trial and conducted a de novo review of the underlying liability, reviewing the settlement officers' determinations for abuse of discretion.

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Issue(s)

Whether each petitioner is liable for the assessed $47,000 penalty under Section 6700 for promoting an abusive tax shelter?

Whether the IRS settlement officers abused their discretion in sustaining the collection actions against the Gardners?

Rule(s) of Law

Section 6700 of the Internal Revenue Code imposes a penalty on any person who organizes or participates in the sale of an entity, plan, or arrangement and makes a false or fraudulent statement regarding tax benefits. The penalty is $1,000 per violation unless the promoter can establish that the gross income derived from the activity was less than $1,000. The legislative history of Section 6700 clarifies that the penalty can be imposed without regard to the purchaser's reliance or actual underreporting of tax. Section 6330 allows taxpayers to request a hearing regarding the filing of a notice of federal tax lien or a proposed levy, and the settlement officer must consider relevant issues raised by the taxpayer, including the underlying liability if the taxpayer did not have a prior opportunity to dispute it.

Holding

The Tax Court held that the Gardners were liable for the $47,000 Section 6700 penalties, as the IRS established that they sold the corporation sole plan to at least 47 individuals. The court applied collateral estoppel based on the District Court's prior determination that the Gardners had engaged in conduct violating Section 6700. The court also found that the IRS settlement officers did not abuse their discretion in sustaining the collection actions against the Gardners.

Reasoning

The Tax Court's reasoning was based on the application of the doctrine of collateral estoppel, which precluded the Gardners from relitigating the issue of their liability under Section 6700. The court found that the issues in the Tax Court case were identical to those decided by the District Court, and all elements required for collateral estoppel were met. The court also relied on the legislative history of Section 6700, which states that the penalty can be imposed without regard to the purchaser's reliance or actual underreporting of tax. The court rejected the Gardners' argument that the IRS had to prove that their clients used the plan to avoid taxes, emphasizing that the focus of Section 6700 is on the promoter's actions. The court also found that the IRS's designation of 2003 as the tax period for the penalty assessments was for administrative convenience and did not prejudice the Gardners, who had a full opportunity to contest the penalties in the Tax Court. The court concluded that the settlement officers did not abuse their discretion in sustaining the collection actions, as they properly verified the procedural

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requirements and considered the Gardners' arguments.

Disposition

The Tax Court sustained the IRS's lien against Mr. Gardner and held that the IRS's proposed levy actions against both Gardners could proceed. Decisions were entered for the respondent.

Significance/Impact

This case clarifies the application of Section 6700 penalties for promoting abusive tax shelters, emphasizing that the penalty is based on the promoter's actions and not the purchaser's reliance or actual tax avoidance. The decision also confirms that Section 6700 penalties can be assessed across multiple years for administrative convenience, as long as the taxpayer is not prejudiced and has a full opportunity to contest the penalty. The case demonstrates the IRS's ability to use collateral estoppel to establish a promoter's liability for Section 6700 penalties based on prior judicial determinations. The decision has practical implications for tax practitioners and promoters of tax shelters, reinforcing the importance of compliance with tax laws and the potential consequences of promoting abusive tax schemes.