Gardner v. Commissioner, 145 T. C. 161 (2015)

In Gardner v. Commissioner, the U. S. Tax Court upheld the IRS's imposition of $47,000 penalties on Fredric and Elizabeth Gardner for promoting an abusive tax shelter involving corporations sole. The court found that the Gardners made false statements about tax benefits, leading to their liability under I. R. C. § 6700. The decision reinforces the IRS's authority to penalize promoters of tax shelters and clarifies that such penalties are not dependent on the actions of the shelter's purchasers.

Parties

Fredric A. Gardner and Elizabeth A. Gardner, petitioners, were the defendants in a prior action brought by the United States in the U. S. District Court for the District of Arizona. In the Tax Court, they were the petitioners challenging the IRS's collection actions regarding the assessed penalties. The respondent was the Commissioner of Internal Revenue.

Facts

Fredric and Elizabeth Gardner, a husband and wife, operated Bethel Aram Ministries (BAM), an unincorporated association they formed in 1993. They promoted a plan involving corporations sole, claiming it could reduce federal income tax liabilities. The plan involved assigning personal income to a corporation sole, which they claimed would transform taxable income into nontaxable income. They also advised customers to create trusts and LLCs, asserting that income assigned to these entities would be tax-free and that donations to churches would generate charitable deductions. The Gardners solicited "donations" in exchange for their services, and they held seminars and retreats to promote their plan. In 2008, the U. S. District Court for the District of Arizona found that the Gardners had organized more than 300 corporations sole and made false statements regarding tax benefits, leading to an injunction against further promotion of the plan. The IRS subsequently assessed $47,000 penalties against each Gardner under I. R. C. § 6700 for their activities in 2003, which the Gardners did not pay, prompting the IRS to commence collection actions.

Procedural History

The U. S. District Court for the District of Arizona granted the United States' motion for summary judgment and permanently enjoined the Gardners from promoting their corporation sole plan on March 24, 2008. This decision was affirmed by the Ninth Circuit Court of Appeals. Following the injunction, the IRS assessed $47,000 penalties against each Gardner under I. R. C. § 6700 for the year 2003. After the Gardners failed to pay these penalties, the IRS filed a notice of lien against Fredric Gardner and proposed levies against both Gardners. The Gardners separately challenged these collection actions before different IRS settlement officers, who sustained the IRS's actions. The Gardners then sought judicial review in the U. S. Tax Court under I. R. C. § 6330(d)(1).

Issue(s)

Whether each petitioner is liable for the assessed $47,000 penalty under I. R. C. § 6700, and whether the IRS settlement officers abused their discretion in sustaining the IRS's lien against Fredric Gardner and in determining that the IRS's proposed levy actions against both Gardners could proceed?

Rule(s) of Law

I. R. C. § 6700 imposes a penalty on any person who organizes or participates in the sale of a tax shelter and makes or furnishes statements regarding the allowability of deductions or tax credits, the excludability of income, or the securing of other tax benefits, knowing or having reason to know that such statements are false or fraudulent as to any material matter. The penalty is $1,000 per violation unless the person establishes that the gross income derived from the activity was less than $1,000. I. R. C. § 6330 provides for a hearing before the IRS may proceed with a levy and allows the taxpayer to challenge the existence or amount of the underlying tax liability if the taxpayer did not receive a notice of deficiency or did not otherwise have an opportunity to dispute the liability.

Holding

The U. S. Tax Court held that the Gardners were liable for the $47,000 penalties under I. R. C. § 6700, as the IRS established that they had sold the corporation sole plan to at least 47 individuals. The court also held that the IRS settlement officers did not abuse their discretion in sustaining the lien against Fredric Gardner and in determining that the proposed levy actions against both Gardners could proceed.

Reasoning

The court applied the doctrine of collateral estoppel, finding that the issues in the Tax Court case were identical to those determined by the District Court, which had found the Gardners liable under I. R. C. § 6700. The court also considered the legislative history of I. R. C. § 6700, which indicates that the actions of the plan participants are not relevant to the application of the penalty. The court reviewed the IRS's evidence, which included bank records and tax returns of 47 individuals who purchased the corporation sole plan, and found that the IRS had met its burden of proof in establishing the Gardners' liability for the penalties. The court rejected the Gardners' argument that the IRS did not prove that the purchasers used the plan to avoid taxes, emphasizing that the focus of I. R. C. § 6700 is on the promoter, not the recipient. The court also addressed the Gardners' contention that the IRS improperly designated 2003 as the year of the penalty, finding that the designation was for administrative purposes and did not prejudice the Gardners. Finally, the court found no abuse of discretion in the IRS settlement officers’ determinations, as they verified the procedural requirements and considered the Gardners’ arguments.

Disposition

The U. S. Tax Court entered decisions for the respondent, sustaining the IRS’s lien against Fredric Gardner and allowing the IRS’s proposed levy actions against both Gardners to proceed.

Significance/Impact

The Gardner decision reinforces the IRS’s authority to penalize promoters of abusive tax shelters under I. R. C. § 6700, even if the purchasers of the shelter do not rely on the plan or underreport their taxes. The case clarifies that the penalty is assessed based on the promoter’s actions, not the purchaser’s actions, and that the IRS may designate a year for the penalty for administrative purposes without prejudicing the taxpayer. The decision also underscores the importance of the doctrine of collateral estoppel in tax litigation, preventing the relitigation of issues already decided by a court of competent jurisdiction. The case has implications for tax practitioners and promoters, emphasizing the need for accurate representations regarding tax benefits and the potential for significant penalties for promoting abusive tax shelters.

