Vigon v. Commissioner, 149 T. C. No. 4, 2017 U. S. Tax Ct. LEXIS 37 (U. S. Tax Court 2017)

In Vigon v. Commissioner, the U. S. Tax Court ruled that a Collection Due Process (CDP) case challenging IRS penalties remains viable despite the IRS's abatement of those penalties and release of liens. The court rejected the IRS's motion to dismiss the case as moot, emphasizing that the agency's refusal to concede the taxpayer's liability and its reservation of the right to reassess penalties in the future kept the case alive. This decision clarifies the scope of judicial review in CDP hearings and underscores the importance of finality in resolving taxpayer liability challenges.

Parties

Dean Matthew Vigon, the petitioner, represented himself. The respondent, the Commissioner of Internal Revenue, was represented by Scott A. Hovey.

Facts

Dean Matthew Vigon submitted nine Forms 1041, "U. S. Income Tax Return for Estates and Trusts," on behalf of the "Dean M. Vigon Trust" from June 2010 through July 2011. The IRS assessed nine $5,000 penalties against Vigon under I. R. C. sec. 6702 for what it deemed "frivolous tax submissions. " Vigon received a notice of Federal tax lien in May 2014 and requested a Collection Due Process (CDP) hearing, during which he challenged his liability for these penalties. The IRS's Office of Appeals issued a determination sustaining the penalty liabilities and the notice of lien. Vigon subsequently filed a petition with the U. S. Tax Court. Before the trial, the IRS abated the penalties and released the lien but did not concede Vigon's liability and reserved the right to reassess the penalties later.

Procedural History

Vigon's case progressed through the Tax Court system with several notable procedural developments. Initially, the IRS moved for summary judgment, but the court denied this motion, citing genuine disputes of fact regarding the number of returns filed and the supervisory approval of the penalties under I. R. C. sec. 6751(b)(1). The case was then remanded to the IRS Office of Appeals for a supplemental hearing to verify compliance with I. R. C. sec. 6751(b)(1). After the supplemental hearing, the IRS Appeals reaffirmed its determination. As the trial approached, the IRS moved for a continuance, announcing its intention to abate the penalties and release the liens, and subsequently filed a motion to dismiss the case on grounds of mootness. The Tax Court, however, denied this motion, holding that the case was not moot due to the unresolved liability challenge and the IRS's reservation of the right to reassess penalties.

Issue(s)

Whether a Collection Due Process (CDP) case remains viable and not moot when the

IRS abates the penalties and releases the lien but does not concede the taxpayer's liability and reserves the right to reassess penalties in the future?

Rule(s) of Law

The controlling legal principle in this case is derived from I. R. C. sec. 6330(d), which grants the Tax Court jurisdiction to review determinations made by the IRS Office of Appeals in CDP hearings. Under I. R. C. sec. 6330(c)(2)(B), a taxpayer may challenge the existence or amount of the underlying tax liability in a CDP hearing if the taxpayer did not receive a statutory notice of deficiency or otherwise have an opportunity to dispute such tax liability. Additionally, the court relied on the legal standard for mootness, which requires that there be no reasonable expectation that the conduct will recur and that interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.

Holding

The U. S. Tax Court held that Vigon's CDP case was not moot despite the IRS's abatement of the penalties and release of the lien. The court's decision was based on the IRS's non-concession of Vigon's liability for the penalties and its reservation of the right to reassess the penalties at a later date.

Reasoning

The court's reasoning centered on the principles governing mootness and the scope of its jurisdiction in CDP cases. The court emphasized that the IRS's abatement of the penalties was a tactical retreat, not a surrender, as it did not concede Vigon's liability and reserved the right to reassess the same penalties. The court found that the IRS's actions did not meet the criteria for mootness because there was a reasonable expectation that the conduct (reassessment of penalties) could recur, and the abatement did not irrevocably eradicate the effects of the alleged violation. The court also cited precedent, such as *Hotel Conquistador, Inc. v. United States*, which held that a case is not moot if the government retains the ability to reinstate the disputed liability. The court rejected the IRS's argument that the release of the lien and abatement of the penalties divested the court of jurisdiction over the liability challenge, asserting that its jurisdiction extended to all issues properly within the CDP hearing, including the liability challenge under I. R. C. sec. 6330(c)(2)(B). The court also considered the practical implications for taxpayers, noting that allowing the IRS to abate penalties, moot a case, and then reassess at a later date would leave taxpayers in a perpetual state of uncertainty.

Disposition

The Tax Court denied the IRS's motion to dismiss the case on grounds of mootness and retained jurisdiction over Vigon's liability challenge.

Significance/Impact

The *Vigon* decision has significant implications for the scope of judicial review in Collection Due Process hearings. It clarifies that a CDP case is not mooted by the IRS's abatement of penalties and release of liens if the agency does not concede the taxpayer's liability and reserves the right to reassess penalties. This ruling reinforces the importance of finality in resolving taxpayer liability challenges and protects taxpayers from the threat of perpetual reassessment by the IRS. The decision also underscores the Tax Court's broad jurisdiction over all issues properly raised in a CDP hearing, including challenges to underlying tax liabilities. Subsequent cases have cited *Vigon* to affirm the principle that a liability challenge in a CDP hearing remains viable even if the IRS takes actions that would otherwise moot collection issues.

