Do S. Wong v. Commissioner, T. C. Memo. 2020-32 (U. S. Tax Court 2020)

In Do S. Wong v. Commissioner, the U. S. Tax Court upheld the IRS's filing of a federal tax lien against Wong, affirming the agency's collection action as not constituting an abuse of discretion. Wong, who failed to substantiate his 2013 tax deductions and did not respond to IRS requests for financial information during the collection due process (CDP) hearing, challenged the lien. The court's decision emphasizes the IRS's discretion in collection actions and the importance of taxpayer cooperation in CDP proceedings, impacting future tax collection cases.

Parties

Do S. Wong, the petitioner, represented himself pro se. The respondent was the Commissioner of Internal Revenue, represented by Halvor R. Melom.

Facts

Do S. Wong, a California resident, filed a timely federal income tax return for 2013, reporting a tax liability of $10,395. He claimed an overpayment, which he elected to apply to his 2014 tax liability. The IRS examined his 2013 return and disallowed several hundred thousand dollars in business expense deductions due to lack of substantiation. The IRS proposed a deficiency of $156,326 and an accuracy-related penalty of $31,265. Wong did not respond to the 30-day letter or the subsequent notice of deficiency sent on June 28, 2016. The IRS assessed the deficiency and penalty on February 13, 2017, after Wong failed to file a petition within the 90-day period. To collect the unpaid liability, the IRS filed a notice of federal tax lien (NFTL) on February 27, 2018, and sent Wong a notice of the lien filing and his right to a hearing.

Wong requested a CDP hearing, asserting he did not owe any tax for 2013. The settlement officer (SO) scheduled a telephone hearing for June 13, 2018, and outlined the required documentation for considering collection alternatives, including a Form 433-A and copies of unfiled tax returns for 2014-2017. Wong did not attend the hearing, submit the required documents, or communicate with the SO until after missing the hearing, when he requested additional time to provide documentation for his 2013 expenses and to complete his 2014-2017 returns. The SO denied the extension, advised Wong to pursue audit reconsideration, and closed the case on July 31, 2018. The IRS issued a notice of determination sustaining the NFTL filing on August 2, 2018.

Procedural History

Wong timely filed a petition with the U. S. Tax Court challenging the IRS's determination. The Commissioner moved for summary judgment twice, first on July 11, 2019, and again on October 18, 2019, after supplementing the record with evidence of supervisory approval for the accuracy-related penalty. Wong did not

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respond to either motion. The court initially denied the first motion without prejudice due to uncertainty about the penalty's supervisory approval but granted the second motion, finding no genuine dispute as to any material fact and ruling as a matter of law that the IRS did not abuse its discretion in sustaining the NFTL filing.

Issue(s)

Whether the IRS abused its discretion in sustaining the filing of a notice of federal tax lien against Wong, given his failure to substantiate his 2013 tax deductions and to cooperate in the CDP hearing process?

Rule(s) of Law

In a CDP case, the Tax Court reviews the IRS's determination for abuse of discretion if the taxpayer's underlying liability is not at issue. Abuse of discretion occurs when a determination is arbitrary, capricious, or without sound basis in fact or law. The IRS must verify that the requirements of applicable law or administrative procedure have been met, consider any relevant issues raised by the taxpayer, and balance the need for efficient tax collection with the taxpayer's concerns about the intrusiveness of the collection action.

Holding

The U. S. Tax Court held that the IRS did not abuse its discretion in sustaining the filing of the NFTL against Wong. The court found that the IRS properly verified compliance with legal and administrative requirements, considered Wong's concerns, and appropriately balanced collection needs with the taxpayer's interests.

Reasoning

The court reasoned that Wong's underlying tax liability for 2013 was not at issue because he received a valid notice of deficiency and did not petition the Tax Court within the statutory period. Thus, the court reviewed the IRS's determination for abuse of discretion. The court found that the SO verified that the notice of deficiency was sent to Wong's last known address, the tax liability was properly assessed, and supervisory approval was secured for the accuracy-related penalty, as required by section 6751(b)(1). The court noted that the SO provided Wong with instructions on how to pursue audit reconsideration, a discretionary process outside the CDP framework. Wong's failure to attend the scheduled hearing, submit required financial information, or seek audit reconsideration justified the SO's decision not to grant further extensions. The court concluded that the IRS's actions were not arbitrary, capricious, or without sound basis in fact or law, thus not constituting an abuse of discretion.

Disposition

The U. S. Tax Court granted summary judgment in favor of the Commissioner and

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sustained the IRS’s collection action by upholding the filing of the NFTL.

Significance/Impact

Do S. Wong v. Commissioner reinforces the discretion afforded to the IRS in collection actions and the importance of taxpayer cooperation in CDP proceedings. The decision highlights that taxpayers must substantiate their claims and comply with IRS requests for information to challenge collection actions effectively. It also clarifies the IRS’s authority to proceed with collection actions when taxpayers fail to engage in the CDP process, potentially affecting future cases where taxpayers seek to challenge collection actions without providing necessary documentation or pursuing alternative remedies such as audit reconsideration. The case underscores the procedural requirements and the limited scope of judicial review in CDP cases, emphasizing the need for taxpayers to address their underlying liabilities through appropriate channels before challenging collection actions.

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