Van Bemmelen v. Commissioner, 155 T. C. No. 4 (2020)

In Van Bemmelen v. Commissioner, the U. S. Tax Court upheld the IRS Whistleblower Office's (WBO) rejection of Michael Van Bemmelen's claim for an award under I. R. C. sec. 7623(b). The court found the WBO's decision to be supported by the administrative record and not an abuse of discretion. Van Bemmelen alleged tax evasion by a global insurance company but failed to provide specific, credible information. The ruling reinforces the IRS's broad discretion in handling whistleblower claims and clarifies the scope of judicial review in such cases.

Parties

Michael Van Bemmelen, as the petitioner, sought review of the IRS Whistleblower Office's determination to reject his claim for a whistleblower award. The respondent was the Commissioner of Internal Revenue. Throughout the litigation, Van Bemmelen represented himself pro se, while the Commissioner was represented by Nicole M. Connelly.

Facts

In March 2018, Michael Van Bemmelen, through his attorney Linda J. Stengle, submitted a Form 211 to the IRS Whistleblower Office (WBO), alleging tax violations by a global insurance company (the target). Van Bemmelen's claim referenced an earlier submission from 2012, which related to the target and other taxpayers. The 2018 Form 211 included a narrative asserting the target's involvement in a tax evasion scheme involving investments in life insurance policies and money laundering. Van Bemmelen alleged that the target improperly deducted interest on borrowed funds used to finance these investments, resulting in significant tax underpayments. The WBO forwarded the claim to a classifier in the Large Business & International Division (LB&I), who recommended rejection due to the speculative nature of the allegations and lack of specific, credible information. On September 11, 2018, the WBO issued a final determination rejecting Van Bemmelen's claim under I. R. C. sec. 7623(a).

Procedural History

After the WBO's rejection, Van Bemmelen timely petitioned the U. S. Tax Court for review. The Commissioner moved for summary judgment, supported by declarations from the LB&I classifier and an employee in the WBO's Initial Claim Evaluation Unit. Van Bemmelen moved to supplement the administrative record with his 2012 submission and a 2019 document reflecting a presentation to IRS Criminal Investigation Division agents. The Tax Court granted the motion to supplement the record with the 2012 submission but denied it regarding the 2019 document. The court reviewed the case under the Administrative Procedure Act's standard of review, focusing on whether the WBO's action was arbitrary, capricious, an abuse of

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discretion, or otherwise not in accordance with law.

Issue(s)

Whether the IRS Whistleblower Office abused its discretion in rejecting Michael Van Bemmelen's claim for a whistleblower award under I. R. C. sec. 7623(b) on the grounds that the information provided was speculative and/or did not provide specific or credible information regarding tax underpayments or violations of internal revenue laws?

Rule(s) of Law

The Tax Court's review of the WBO's determination is governed by the standard of review under section 706(2)(A) of the Administrative Procedure Act (APA), which requires the court to reverse agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. " I. R. C. sec. 7623(b) mandates whistleblower awards if certain statutory requirements are met, including that the proceeds in dispute exceed $2 million. The WBO may reject claims that fail to meet threshold criteria, such as containing specific, credible information about tax underpayments or violations of internal revenue laws. The WBO has sole discretion to request additional assistance from the whistleblower or their legal representative.

Holding

The Tax Court held that the IRS Whistleblower Office did not abuse its discretion in rejecting Michael Van Bemmelen's claim for a whistleblower award. The court found that the WBO's determination was supported by the administrative record and that the allegations in Van Bemmelen's claim were speculative and lacked specific, credible information regarding tax underpayments or violations of internal revenue laws by the target.

Reasoning

The court's reasoning focused on the WBO's discretion to reject claims that fail to meet statutory and regulatory criteria. The court analyzed the information provided by Van Bemmelen and found it to be speculative, particularly with respect to the target's alleged involvement in money laundering and improper interest deductions. The court noted that the 2012 submission, which was added to the administrative record, did not contain specific allegations against the target that would have affected the WBO's analysis. The court also considered the WBO's discretion to limit the scope of investigations and its authority to reject claims without further investigation if they do not meet threshold requirements. The court rejected Van Bemmelen's arguments about procedural irregularities and the WBO Director's alleged improper redelegation of authority, finding no merit in these claims. The court emphasized that it could not compel the IRS to commence an audit or explain

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its decision not to do so, and that the WBO's rejection of Van Bemmelen's claim was not arbitrary, capricious, or an abuse of discretion.

Disposition

The Tax Court granted the Commissioner's motion for summary judgment, affirming the WBO's rejection of Van Bemmelen's claim for a whistleblower award.

Significance/Impact

The Van Bemmelen decision reinforces the broad discretion afforded to the IRS Whistleblower Office in evaluating and rejecting whistleblower claims. It clarifies that the Tax Court's review is limited to determining whether the WBO's action was arbitrary, capricious, or an abuse of discretion, and that the court cannot compel the IRS to commence an audit or explain its decision not to do so. The case also highlights the importance of providing specific, credible information in whistleblower claims to meet the threshold criteria for further consideration. Subsequent courts have cited Van Bemmelen in upholding the WBO's discretion and the limited scope of judicial review in whistleblower cases.

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