Thompson v. Commissioner, 155 T. C. No. 5 (U. S. Tax Ct. 2020)

In Thompson v. Commissioner, the U. S. Tax Court ruled that the IRS's settlement offers during an ongoing audit do not constitute the "initial determination" of a penalty assessment, thus not requiring prior supervisory approval under I. R. C. § 6751(b)(1). The court also affirmed that approval by an acting immediate supervisor is sufficient under the statute. This decision clarifies the timing and nature of supervisory approval needed for penalty assessments, impacting how the IRS must proceed in audits involving penalties.

Parties

Douglas M. Thompson and Lisa Mae Thompson (Petitioners) filed a petition in the U. S. Tax Court against the Commissioner of Internal Revenue (Respondent). The case proceeded through the Tax Court with no further appeals noted in the provided text.

Facts

Douglas M. and Lisa Mae Thompson participated in a distressed asset trust (DAT) transaction, which they reported on their 2005 tax return. The IRS assigned Revenue Agent James Damasiewicz to examine their tax returns for multiple years, including 2005. During the examination, Damasiewicz sent the Thompsons two letters offering settlements related to the DAT transaction. The 2007 letter proposed a settlement with a reduced accuracy-related penalty of 10% under I. R. C. § 6662, while the 2009 letter offered a 15% penalty and waived the I. R. C. § 6662A penalty. The Thompsons did not accept either offer. After completing the examination, Damasiewicz concluded the Thompsons owed tax and penalties for 2003 through 2007. His acting immediate supervisor, Linda Barath, approved the penalties in writing before the IRS issued a notice of deficiency to the Thompsons on December 18, 2012, asserting the penalties under I. R. C. §§ 6662(h) and 6662A.

Procedural History

The Thompsons filed a petition in the U. S. Tax Court seeking redetermination of the deficiencies and penalties asserted in the notice of deficiency. They moved for partial summary judgment, arguing that the IRS failed to comply with I. R. C. § 6751(b)(1) because the penalties were not approved by Damasiewicz's supervisor before the settlement offers were made. The Tax Court considered the motion for partial summary judgment, applying the standard of review for summary judgment, which requires no genuine dispute of material fact and that a decision may be rendered as a matter of law.

Issue(s)

Whether the IRS's settlement offers during an ongoing audit constitute the "initial determination" of a penalty assessment, thus requiring prior supervisory approval under I. R. C. § 6751(b)(1)?

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Whether the supervisory approval requirement of I. R. C. § 6751(b)(1) was satisfied when the revenue agent's acting immediate supervisor approved the penalties?

Rule(s) of Law

I. R. C. § 6751(b)(1) states that "[n]o penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination. " The Tax Court has interpreted the "initial determination" to mean a formal communication that the Examination Division has completed its work and made an unequivocal decision to assert penalties, as established in Belair Woods, LLC v. Commissioner, 154 T. C. ___ (2020).

Holding

The Tax Court held that the IRS's settlement offers to the Thompsons did not constitute the "initial determination" of a penalty assessment under I. R. C. § 6751(b)(1), and thus did not require prior supervisory approval. The court further held that the supervisory approval requirement was satisfied when Damasiewicz's acting immediate supervisor approved the penalties before the IRS issued the notice of deficiency. Consequently, the Thompsons' motion for partial summary judgment was denied.

Reasoning

The Tax Court reasoned that the settlement offers were not "determinations" but rather preliminary proposals within an ongoing examination. The court emphasized that the offers did not reflect the IRS's completion of its work and did not assert specific penalties based on a completed audit but rather offered reduced penalties based on Announcement 2005-80. The court cited Belair Woods, LLC v. Commissioner, which defined the "initial determination" as a formal communication of the Examination Division's completed work and unequivocal decision to assert penalties. The court also rejected the Thompsons' argument that approval by an acting supervisor was insufficient, stating that the statute requires only the approval of the immediate supervisor, without mandating a "meaningful review. " The court further dismissed the Thompsons' invocation of the rule of lenity, finding no ambiguity in the statute that would require a construction in favor of the taxpayer.

Disposition

The Tax Court denied the Thompsons' motion for partial summary judgment.

Significance/Impact

Thompson v. Commissioner clarifies the application of I. R. C. § 6751(b)(1) by distinguishing between settlement offers and formal penalty determinations. It establishes that settlement offers during an ongoing examination do not trigger the

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supervisory approval requirement, thus allowing the IRS flexibility in negotiating with taxpayers. The decision also affirms that approval by an acting supervisor is sufficient under the statute, providing clarity on the scope of “immediate supervisor” in this context. This ruling impacts IRS procedures for penalty assessments and may influence future cases involving similar issues of supervisory approval timing and authority.

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