McCrory v. Commissioner, 156 T. C. No. 6 (U. S. Tax Court 2021)

In McCrory v. Commissioner, the U. S. Tax Court ruled it lacked jurisdiction over a whistleblower's petition challenging a preliminary award recommendation under I. R. C. § 7623(a). The court clarified that only a final determination, not a preliminary award, triggers its jurisdiction, impacting how whistleblowers can challenge IRS decisions on awards.

Parties

Suzanne J. McCrory, the Petitioner, filed pro se against the Commissioner of Internal Revenue, the Respondent, in the U. S. Tax Court, docket number 9659-18W.

Facts

Suzanne J. McCrory submitted 21 Forms 211 to the IRS Whistleblower Office (WBO), alleging underreported tax obligations by 21 taxpayers. The WBO, after using her information to collect proceeds from two taxpayers, sent McCrory a preliminary award recommendation under I. R. C. § 7623(a) of $962. 92. McCrory did not accept or reject this recommendation but instead requested access to the administrative file, which was denied. She then filed a petition with the Tax Court, seeking review of the preliminary award recommendation.

Procedural History

McCrory filed a petition in the U. S. Tax Court to review the preliminary award recommendation under I. R. C. § 7623(a). The Commissioner moved to dismiss for lack of jurisdiction, arguing that the preliminary award recommendation was not a "determination" as required for Tax Court jurisdiction under I. R. C. § 7623(b)(4). The Tax Court granted the Commissioner's motion to dismiss, holding that it lacked jurisdiction because no final determination had been issued.

Issue(s)

Whether a preliminary award recommendation under I. R. C. § 7623(a) constitutes a "determination" within the meaning of I. R. C. § 7623(b)(4), thereby conferring jurisdiction on the U. S. Tax Court?

Rule(s) of Law

I. R. C. § 7623(b)(4) grants the U. S. Tax Court jurisdiction over appeals of determinations regarding whistleblower awards under paragraphs (1), (2), or (3) of § 7623(b). The court has held that jurisdiction is established when the Commissioner issues a written notice that embodies a final administrative decision regarding the whistleblower's claims in accordance with established procedures.

Holding

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The U. S. Tax Court held that a preliminary award recommendation under I. R. C. § 7623(a) does not constitute a "determination" within the meaning of I. R. C. § 7623(b)(4). Therefore, the court lacked jurisdiction over McCrory's petition because no final determination had been issued.

Reasoning

The court reasoned that a preliminary award recommendation does not represent a final administrative decision because the award amount remains subject to change based on a final determination of tax. The letter explicitly stated that the award was preliminary and subject to revision, indicating it was not a final decision. The court referenced prior cases, such as Whistleblower 4496-15W v. Commissioner, which established that a determination occurs when the award amount is finalized, typically upon issuance of an award check. McCrory's failure to accept the preliminary award and the absence of a final decision letter or award check further supported the court's conclusion that no determination had been made. The court also noted its limited jurisdiction under § 7623(b)(4) and its inability to intervene in the administrative process or compel a final decision.

Disposition

The U. S. Tax Court granted the Commissioner's motion to dismiss for lack of jurisdiction, as no determination under I. R. C. § 7623(b)(4) had been issued to McCrory.

Significance/Impact

This ruling clarifies that the U. S. Tax Court's jurisdiction over whistleblower award disputes is limited to final determinations, not preliminary recommendations. It underscores the procedural requirements whistleblowers must follow to challenge IRS decisions on awards and highlights the court's inability to intervene in ongoing administrative processes. The decision impacts the strategic considerations of whistleblowers in pursuing claims and challenges related to their awards.

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