Green Valley Investors, LLC v. Commissioner, 159 T. C. No. 5 (U. S. Tax Court 2022)

The U. S. Tax Court ruled that IRS Notice 2017-10, which classified certain conservation easement transactions as listed, was a legislative rule requiring notice and comment under the APA. The Court invalidated the notice and barred the imposition of penalties under section 6662A, impacting how the IRS identifies tax avoidance transactions.

Parties

Green Valley Investors, LLC, et al. , with Bobby A. Branch as Tax Matters Partner, were the petitioners. The Commissioner of Internal Revenue was the respondent. The case included consolidated actions involving Vista Hill Investments, LLC, Big Hill Partners, LLC, and Tick Creek Holdings, LLC, all with Bobby A. Branch as Tax Matters Partner.

Facts

Green Valley Investors, LLC, and other related entities, granted conservation easements to Triangle Land Conservancy in 2014 and 2015, claiming substantial charitable deductions on their tax returns. The IRS issued Notice 2017-10, identifying syndicated conservation easement transactions as listed transactions subject to reporting requirements and potential penalties. The IRS later disallowed these deductions and asserted penalties under sections 6662 and 6662A, among others, following audits.

Procedural History

The petitioners timely challenged the IRS's adjustments and penalties through petitions to the U. S. Tax Court. Both parties moved for partial summary judgment, with the petitioners arguing against the retroactive application of penalties and the IRS's failure to comply with the APA's notice-and-comment rulemaking procedures for Notice 2017-10.

Issue(s)

Whether Notice 2017-10, which identified syndicated conservation easement transactions as listed transactions, was a legislative rule requiring notice-and-comment rulemaking under the Administrative Procedure Act?

Rule(s) of Law

The Administrative Procedure Act (APA) mandates that agencies follow notice-and-comment rulemaking for legislative rules, which have the force of law and impose new duties or rights. See *5 U. S. C. § 553*. The APA does not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure, or

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practice. *5 U. S. C. § 553(b)(A)*.

Holding

The Court held that Notice 2017-10 was a legislative rule because it imposed new reporting obligations and potential penalties on taxpayers and advisors, thus requiring notice-and-comment rulemaking under the APA. As the IRS did not comply with these requirements, the Court set aside Notice 2017-10 and prohibited the imposition of section 6662A penalties in these cases.

Reasoning

The Court's reasoning focused on distinguishing between legislative and interpretative rules. It concluded that Notice 2017-10 was a legislative rule because it created new substantive reporting obligations and penalties, not merely interpreting existing law. The Court rejected the IRS's argument that Congress had implicitly exempted the IRS from APA requirements when it enacted section 6707A, which cross-referenced section 6011 regulations. The Court emphasized that Congress must expressly override APA requirements, and the mere reference to existing regulations did not suffice. The Court also noted that the IRS had not invoked the good cause exception to bypass notice and comment, which could have been an alternative approach.

Disposition

The Court granted the petitioners' Cross-Motions for Summary Judgment in part, setting aside Notice 2017-10 and prohibiting the imposition of section 6662A penalties in these consolidated cases.

Significance/Impact

This decision has significant implications for the IRS's ability to identify and regulate tax avoidance transactions. It clarifies that the IRS must follow APA notice-and-comment procedures when issuing rules that impose new obligations or penalties. The ruling may affect the IRS's future use of notices to identify listed transactions and could lead to challenges against other IRS notices issued without notice and comment. The decision underscores the importance of procedural compliance in administrative rulemaking and could influence how tax shelters and similar transactions are regulated.

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