Thomas Shands v. Commissioner of Internal Revenue, 160 T. C. No. 5 (2023)

In Thomas Shands v. Commissioner of Internal Revenue, the U. S. Tax Court ruled it lacked jurisdiction to review a whistleblower's claim for a nondiscretionary award under I. R. C. § 7623(b). The court determined that the creation of the IRS's Offshore Voluntary Disclosure Initiative (OVDI) and taxpayer participation in it did not constitute an "administrative or judicial action" required for the court's jurisdiction. This decision clarifies the scope of the Tax Court's authority over whistleblower claims, emphasizing the necessity of IRS action based on the whistleblower's information.

Parties

Thomas Shands (Petitioner) v. Commissioner of Internal Revenue (Respondent). Shands was the appellant at the Tax Court level, seeking review of the IRS Whistleblower Office's denial of his claim for a whistleblower award.

Facts

Thomas Shands filed a whistleblower claim with the IRS Whistleblower Office (WBO) seeking a nondiscretionary award under I. R. C. § 7623(b) for his alleged contribution to the success of the 2011 Offshore Voluntary Disclosure Initiative (OVDI). Shands claimed his cooperation with federal agents in the arrest and subsequent guilty plea of Swiss banker Renzo Gadola spurred widespread participation in OVDI, leading to significant tax collections. The WBO denied Shands's claim, asserting that the IRS did not proceed with an administrative or judicial action based on information Shands provided. Shands appealed the denial to the Tax Court.

Procedural History

Shands filed his whistleblower claim in 2012, and the WBO denied it in 2016. Shands appealed to the Tax Court in 2016. The Commissioner moved to dismiss for lack of jurisdiction, arguing that the IRS did not proceed with an action based on Shands's information. The Tax Court granted the Commissioner's motion to dismiss, finding it lacked jurisdiction under I. R. C. § 7623(b)(4) because no administrative or judicial action was taken by the IRS based on Shands's information.

Issue(s)

Whether the creation of the IRS's Offshore Voluntary Disclosure Initiative (OVDI) and taxpayer participation in OVDI constitute an "administrative or judicial action" under I. R. C. § 7623(b)(1), thereby conferring jurisdiction on the Tax Court to review the WBO's denial of Shands's whistleblower claim?

Rule(s) of Law

© 2025 SCOTUSreports.com. All rights reserved.

I. R. C. § 7623(b)(1) provides for nondiscretionary whistleblower awards when the IRS proceeds with an "administrative or judicial action" based on information provided by the whistleblower. Treasury Regulation § 301. 7623-2(a) defines "administrative action" as a civil or criminal proceeding that may result in collected proceeds and "judicial action" as a proceeding in any court that may result in collected proceeds. The Tax Court's jurisdiction to review whistleblower award determinations is limited to cases where the IRS has proceeded with such an action.

Holding

The Tax Court held that it lacked jurisdiction to review the WBO's denial of Shands's whistleblower claim because the creation of OVDI and taxpayer participation in it did not constitute an "administrative or judicial action" under I. R. C. § 7623(b)(1) and Treasury Regulation § 301. 7623-2(a).

Reasoning

The court's reasoning centered on the statutory and regulatory definitions of "administrative or judicial action. " The court relied on the D. C. Circuit's decision in Li v. Commissioner, which held that the Tax Court lacks jurisdiction over a whistleblower claim if the IRS has not proceeded with an administrative or judicial action based on the whistleblower's information. The court found that the creation of OVDI did not constitute a "proceeding against any person" as required by the regulation, nor did taxpayer participation in OVDI constitute such an action. The court also rejected Shands's argument that the regulations should not apply retroactively to his claim, citing the D. C. Circuit's ruling in Bergerco Canada v. U. S. Treasury Department, which upheld the application of new regulatory criteria to pending applications. The court concluded that Shands failed to meet his burden of proving jurisdiction, and thus, the court could not review the WBO's denial.

Disposition

The Tax Court granted the Commissioner's motion to dismiss for lack of jurisdiction and dismissed Shands's appeal.

Significance/Impact

This decision clarifies the jurisdictional limits of the Tax Court in reviewing whistleblower award claims under I. R. C. § 7623(b). It underscores that the creation of IRS programs like OVDI and taxpayer participation in such programs do not constitute the requisite "administrative or judicial action" for Tax Court jurisdiction. The ruling may deter future whistleblower claims based on the indirect effects of their information on IRS programs, focusing instead on direct enforcement actions. It also reinforces the deference given to Treasury Regulations in defining statutory terms, impacting how whistleblower claims are evaluated and processed by the IRS and the Tax Court.

© 2025 SCOTUSreports.com. All rights reserved.