***Organic Cannabis Foundation, LLC v. Commissioner of Internal Revenue*, 161 T. C. No. 4 (2023)**

In a significant ruling, the U. S. Tax Court decided that the 30-day deadline for requesting a Collection Due Process (CDP) hearing can be equitably tolled, overturning prior precedent. This decision expands taxpayer rights by allowing late-filed requests to be considered when equitable circumstances exist, impacting future IRS collection actions and taxpayer interactions.

Parties

The petitioner, Organic Cannabis Foundation, LLC, is a California limited liability company that elected to be taxed as a corporation. The respondent is the Commissioner of Internal Revenue. The case was heard in the U. S. Tax Court with docket numbers 381-22L and 5442-22L.

Facts

Organic Cannabis Foundation, LLC had unpaid income taxes for the years 2010, 2011, and 2018. The IRS issued notices of federal tax lien (NFTL) filings for these years. The petitioner timely requested a CDP hearing for the 2010 and 2011 tax years within the statutory 30-day period. However, the petitioner's request for a 2018 CDP hearing was submitted one day after the 30-day period. The IRS provided a CDP hearing for 2010 and 2011 but determined the 2018 request was untimely and offered an equivalent hearing instead. The petitioner filed a petition seeking review for all three years, and after the petition was filed, the IRS issued a Decision Letter for 2018.

Procedural History

The IRS moved to dismiss the case regarding the 2018 tax year for lack of jurisdiction, arguing that the petitioner's request for a CDP hearing was untimely, and thus, there was no determination to review. The petitioner argued that the 30-day period should be equitably tolled and that the IRS should have made a determination for 2018. The Tax Court overruled its previous holding in Kennedy v. Commissioner, which stated that the 30-day period was a fixed deadline not subject to equitable tolling, and remanded the case to the IRS to consider whether the circumstances warranted equitable tolling for the 2018 tax year.

Issue(s)

Whether the 30-day period for requesting a CDP hearing under I. R. C. § 6320(a)(3)(B) can be equitably tolled?

Rule(s) of Law

The Internal Revenue Code, I. R. C. § 6320, provides taxpayers with the right to a

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CDP hearing upon the filing of an NFTL. The statute requires that such a hearing be requested within 30 days after the 5-day notice period following the NFTL filing. The Supreme Court has established a rebuttable presumption that nonjurisdictional filing deadlines are subject to equitable tolling, as articulated in Irwin v. Dep't of Veteran Affairs, 498 U. S. 89 (1990).

Holding

The Tax Court held that the 30-day period for requesting a CDP hearing under I. R. C. § 6320(a)(3)(B) is subject to equitable tolling. The court overruled Kennedy v. Commissioner, which had previously held that the 30-day period was a fixed deadline not amenable to equitable tolling.

Reasoning

The court's reasoning focused on the statutory text, context, and legislative history of I. R. C. § 6320. The court found no clear statement in the statute that the 30-day period was an administrative bar that precluded Appeals from considering untimely requests. The court applied the Supreme Court's framework from cases such as Boechler, P. C. v. Commissioner, 142 S. Ct. 1493 (2022), which held that a similar 30-day period under I. R. C. § 6330(d)(1) was subject to equitable tolling. The court noted the remedial nature of the CDP regime, designed to provide due process and fairness to taxpayers, supported the application of equitable tolling. The court also considered the Treasury regulations, which, while setting forth a strict 30-day deadline, did not categorically preclude equitable tolling and allowed for certain exceptions. The court concluded that the absence of a clear statement against equitable tolling, combined with the statute's remedial purpose, supported the application of the doctrine. The court remanded the case for the IRS to determine whether equitable tolling was warranted based on the circumstances surrounding the petitioner's late filing for the 2018 tax year.

Disposition

The Tax Court overruled its precedent in Kennedy v. Commissioner and held that the 30-day period for requesting a CDP hearing is subject to equitable tolling. The court remanded the case to the IRS to determine if equitable tolling applied to the 2018 tax year.

Significance/Impact

This ruling significantly expands taxpayer rights by allowing for the equitable tolling of the 30-day period to request a CDP hearing. It overturns prior precedent that treated the deadline as fixed, thereby enhancing due process protections for taxpayers. The decision aligns the administrative deadline with the judicial filing deadline under I. R. C. § 6330(d)(1), which the Supreme Court held was subject to equitable tolling. The ruling may lead to more flexible IRS practices in handling late-

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filed CDP hearing requests and could influence future cases regarding the application of equitable principles in tax law. It underscores the importance of the CDP regime as a protective mechanism for taxpayers facing IRS collection actions.

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