Kraske v. Commissioner, 161 T. C. No. 7 (2023)

In Kraske v. Commissioner, the U. S. Tax Court ruled that supervisory approval for penalties under I. R. C. § 6751(b) is timely if given before the supervisor loses discretion, following the Ninth Circuit's precedent in Laidlaw's Harley Davidson. This decision impacts how and when the IRS must approve penalties, ensuring discretion remains with the supervisor until the case is transferred to Appeals.

Parties

Wolfgang Frederick Kraske, the petitioner, proceeded pro se. The respondent was the Commissioner of Internal Revenue, represented by Alexander D. DeVitis and Christine A. Fukushima.

Facts

The IRS examined Wolfgang Frederick Kraske's federal income tax returns for 2011 and 2012. On June 2, 2014, a tax compliance officer (TCO) issued Kraske a 15-day letter proposing deficiencies and penalties under I. R. C. § 6662(a) and (b)(2). Kraske was given 15 days to request a conference with the IRS Office of Appeals. On July 16, 2014, Kraske mailed a request for Appeals consideration, which was received by the TCO on July 24, 2014. On July 21, 2014, the TCO's immediate supervisor approved the penalties. The case was forwarded to Appeals on August 12, 2014, after which Kraske was unable to reach a settlement, leading to a notice of deficiency issued on July 28, 2015.

Procedural History

Kraske timely filed a petition with the U. S. Tax Court, challenging the penalties under I. R. C. § 6662(a) and (b)(2). The court previously sustained the tax deficiencies for 2011 and 2012 in a separate opinion, T. C. Memo. 2023-128. The current opinion focuses on the timeliness of the supervisory approval of the penalties under I. R. C. § 6751(b). The court applied the Golsen doctrine, following the Ninth Circuit's precedent in Laidlaw's Harley Davidson Sales, Inc. v. Commissioner, 29 F. 4th 1066 (9th Cir. 2022), which reversed and remanded 154 T. C. 68 (2020).

Issue(s)

Whether the written supervisory approval of the penalties under I. R. C. § 6751(b) was timely, given that it occurred after the issuance of the 15-day letter but before the case was transferred to the IRS Office of Appeals.

Rule(s) of Law

I. R. C. § 6751(b)(1) requires that no penalty shall be assessed unless the initial determination of such assessment is personally approved in writing by the

© 2025 SCOTUSreports.com. All rights reserved.

immediate supervisor of the individual making such determination. The Ninth Circuit in Laidlaw's Harley Davidson held that supervisory approval must be obtained before the assessment of the penalty or, if earlier, before the relevant supervisor loses discretion whether to approve the penalty assessment.

Holding

The U. S. Tax Court held that the written supervisory approval for the penalties was timely under the standard set by the Ninth Circuit in Laidlaw's Harley Davidson, as the supervisor retained discretion to approve or withhold approval when she did so on July 21, 2014, before the case was transferred to Appeals.

Reasoning

The court applied the Golsen doctrine, following the Ninth Circuit's decision in Laidlaw's Harley Davidson, which held that supervisory approval under § 6751(b) is timely if given before the supervisor loses discretion. The court rejected its prior position in Clay v. Commissioner, which required approval before formal communication of the penalty to the taxpayer. The Ninth Circuit's rationale was deemed to extend to penalties subject to deficiency procedures, and the court found that the supervisor retained discretion when approving the penalties on July 21, 2014, as the case had not yet been transferred to Appeals. The court noted that this timeline was consistent with the Ninth Circuit's findings in Laidlaw's Harley Davidson. The court also considered the broader implications of the Ninth Circuit's holding, which emphasized the importance of supervisory discretion over formal communication deadlines.

Disposition

The court entered a decision for the respondent, affirming the imposition of the penalties under I. R. C. § 6662(a) and (b)(2).

Significance/Impact

Kraske v. Commissioner clarifies the timing requirements for supervisory approval under I. R. C. § 6751(b), aligning with the Ninth Circuit's precedent. This ruling ensures that supervisory approval is considered timely if given before the supervisor loses discretion, which may occur upon transfer to Appeals. The decision impacts IRS procedures and taxpayer rights, emphasizing the importance of maintaining supervisory discretion throughout the penalty assessment process. It also highlights the application of the Golsen doctrine, where the Tax Court follows the precedent of the Court of Appeals with jurisdiction over the appeal, ensuring consistency and judicial efficiency. Subsequent courts may refer to this case when addressing similar issues regarding the timeliness of penalty approvals.

© 2025 SCOTUSreports.com. All rights reserved.