Jenner v. Commissioner, 163 T. C. No. 7 (U. S. Tax Court 2024)

In *Jenner v. Commissioner*, the U. S. Tax Court ruled that Foreign Bank Account Reporting (FBAR) penalties are not taxes and thus not subject to the collection due process (CDP) hearing requirements of I. R. C. §§ 6320 and 6330. The court dismissed the case for lack of jurisdiction, clarifying that the IRS was not obligated to provide a CDP hearing for FBAR penalties, which are governed by Title 31, not Title 26 of the U. S. Code.

Parties

Stephen C. Jenner and Judy A. Jenner, petitioners, v. Commissioner of Internal Revenue, respondent.

Facts

Stephen C. Jenner and Judy A. Jenner were assessed FBAR penalties under 31 U. S. C. § 5321 for failing to file foreign bank account reports for the years 2005 through 2009. The Department of the Treasury's Bureau of the Fiscal Service (BFS) informed the Jenners that funds would be withheld from their monthly Social Security benefits under the Treasury Offset Program (TOP) to satisfy their debts. The Jenners requested collection due process (CDP) hearings, but the IRS denied these requests, asserting that FBAR penalties are not taxes and thus not subject to I. R. C. § 6330 requirements. The Jenners subsequently filed a petition with the U. S. Tax Court, alleging they were deprived of their CDP rights.

Procedural History

The Jenners filed their petition with the U. S. Tax Court on June 5, 2023, while residing in Florida. The Commissioner moved to dismiss the case for lack of jurisdiction on July 19, 2023, arguing that the collection of FBAR penalties is not subject to the notice and other requirements of I. R. C. § 6330. The Tax Court, in its opinion dated October 22, 2024, granted the Commissioner's motion and dismissed the case for lack of jurisdiction.

Issue(s)

Whether Foreign Bank Account Reporting (FBAR) penalties are subject to the requirements of I. R. C. §§ 6320 and 6330, which mandate collection due process (CDP) hearings for unpaid taxes?

Rule(s) of Law

The Internal Revenue Code, specifically I. R. C. §§ 6320 and 6330, mandates collection due process (CDP) hearings for unpaid taxes. FBAR penalties are authorized and imposed by Title 31 of the U. S. Code, specifically 31 U. S. C. § 5321, and are not considered taxes under the Internal Revenue Code. The U. S. Tax Court

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has jurisdiction over cases involving unpaid taxes as per I. R. C. § 7442.

Holding

FBAR penalties are not taxes imposed by the Internal Revenue Code and thus are not subject to the requirements of I. R. C. §§ 6320 and 6330. The U. S. Tax Court lacks jurisdiction over the Jenners' petition because FBAR penalties do not fall within the court's jurisdiction.

Reasoning

The court's reasoning was based on the statutory distinction between Title 26 (Internal Revenue Code) and Title 31 (Money and Finance) of the U. S. Code. FBAR penalties, governed by Title 31, are considered nontax debts to the United States, and their collection is subject to different procedures than those for taxes under Title 26. The court emphasized that the CDP procedures under I. R. C. §§ 6320 and 6330 apply only to unpaid taxes, as evidenced by the language in these sections that consistently refers to "tax. " The court cited previous decisions, such as *Goza v. Commissioner* and *Williams v. Commissioner*, to support its conclusion that FBAR penalties are not subject to the deficiency procedures or CDP requirements. The court also noted that the collection mechanism for FBAR penalties is a civil action, not a lien or levy, further distinguishing them from taxes. The court rejected the Jenners' arguments that the administrative offsets on their Social Security benefits constituted levies by the Secretary that entitled them to a CDP hearing, stating that such offsets are governed by Title 31, not Title 26.

Disposition

The U. S. Tax Court dismissed the case for lack of jurisdiction.

Significance/Impact

Jenner v. Commissioner clarifies that FBAR penalties are not subject to the collection due process (CDP) requirements of I. R. C. §§ 6320 and 6330. This decision reinforces the distinction between Title 26 and Title 31 penalties, impacting how taxpayers and the IRS handle FBAR penalty assessments and collections. The ruling may influence future litigation regarding the applicability of tax court jurisdiction to penalties imposed under other titles of the U. S. Code. Practitioners must advise clients that FBAR penalties are not subject to the same procedural protections as tax liabilities, potentially affecting strategies for challenging such penalties.

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