UNITED STATES TAX COURT

Nicklo v. Commissioner

55 T.C.M. 953 (1988) · No. 27738-86 · Decided May 26, 1988

SUMMARY

The United States Tax Court held that the petitioner could not enforce a settlement offered to his partners in a tax shelter venture because the applicable limitations period for his 1979 tax year had expired. The court also rejected the petitioner's request for interest abatement, concluding that it lacked jurisdiction to grant such relief and that no qualifying IRS error had been shown. Decision was entered for the Commissioner.

CASE DETAILS

COURT	United States Tax Court
WRITING FOR THE COURT	Cohen
JURISDICTION	USA
DECIDED	May 26, 1988
DOCKET	27738-86
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner challenged deficiencies in federal income taxes for 1980 and 1981 and an addition to tax for 1981, seeking enforcement of a settlement offered to his partners in a tax-shelter venture or abatement of interest.
PRECEDENTIAL VALUE	unpublished and nonprecedential
PARTIES	Joseph J. Nicklo v. Commissioner of Internal Revenue

TOPICS

tax court procedure · tax statute of limitations · tax deficiency · tax shelters · tax penalties

PRACTICE AREAS

Federal income taxation · Tax Court procedure · Tax shelters

QUESTIONS PRESENTED

1. Whether petitioner could enforce a conditional settlement based on the settlement offered to his partners in the tax-shelter venture.
2. Whether petitioner could obtain relief by offering to waive the statute of limitations for 1979 after the limitations period had expired.
3. Whether the Tax Court had jurisdiction to abate interest under section 6404(e)(1).

HOLDINGS

1. A limited or conditional waiver of the statute of limitations is invalid when executed after expiration of the original limitations period; petitioner therefore could not compel the Commissioner to consider his proposed reopening of 1979.
2. Petitioner was not entitled to enforce the partners' settlement or obtain equivalent relief because he failed to prove his actual cash investment or establish a legal basis for deductions, and the circumstances provided no legal or equitable basis for relief.
3. The Tax Court generally lacks jurisdiction to abate interest under section 6404(e), and petitioner was not entitled to interest abatement in any event because he failed to show IRS error concerning the 1980 or 1981 deficiencies.

FACTUAL BACKGROUND

Petitioner invested through Jolyn Fine Arts, a partnership that acquired an art master from Jackie Fine Arts, Inc. He claimed an investment tax credit for 1979 and passed-through losses for 1980 and 1981. The IRS disallowed the 1980 and 1981 losses and issued deficiencies, while petitioner's partners had earlier obtained a settlement allowing deductions for their cash investments. Petitioner did not establish the amount of his actual cash investment or a legal basis for the claimed deductions and sought to condition relief on reopening the otherwise barred 1979 tax year.

PROCEDURAL HISTORY

The Commissioner issued a notice of deficiency on April 9, 1986, determining deficiencies of $16,127 for 1980 and $2,271 for 1981, plus a $681 addition to tax under section 6659 for 1981. Petitioner sought to have the Tax Court enforce a proposed settlement under which he would receive deductions for his cash investment and obtain interest relief. The Tax Court entered decision for the Commissioner.

DISPOSITION

other

CASES CITED

- Glenshaw Glass Co. v. Commissioner, 25 T.C. 1178 (1956)
- General Lead Batteries Co. v. Commissioner, 20 T.C. 685 (1953)
- Rose v. Commissioner, 88 T.C. 386 (1987)
- West v. Commissioner, 88 T.C. 152, 161-164 (1987)

- Rose v. Commissioner, 88 T.C. 386, 424-427 (1987)
- Adams v. Commissioner, 85 T.C. 359, 375-376 (1985)
- Avers v. Commissioner, T.C. Memo. 1988-176
- Adelberg v. Commissioner, T.C. Memo. 1985-597, aff'd without published opinion, 811 F.2d 1507 (9th Cir. 1987)
- Betz v. Commissioner, 90 T.C. (Apr. 26, 1988)
- Bowman v. United States, 824 F.2d 528 (6th Cir. 1987)
- LTV Corp. v. Commissioner, 64 T.C. 589, 597 (1975)
- 508 Clinton Street Corp. v. Commissioner, 89 T.C. 352 (1987)