UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Gitlitz v. Commissioner

6 F. App'x 770 (10th Cir. 2001) · Decided March 26, 2001

SUMMARY

On remand from the Supreme Court, the Tenth Circuit vacated its prior judgment concerning whether discharge-of-indebtedness income of an S corporation passes through to shareholders before or after tax-attribute reduction under 26 U.S.C. § 108(b). The court remanded to the Tax Court with directions to enter judgment for the taxpayers because the deficiency determinations depended exclusively on the sequencing issue resolved by the Supreme Court.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Briscoe; Magill; Tacha
JURISDICTION	Federal
DECIDED	March 26, 2001
DISPOSITION	vacated
PROCEDURAL POSTURE	On remand from the United States Supreme Court after reversal of the Tenth Circuit's prior judgment concerning the tax treatment and sequencing of pass-through income from discharge of indebtedness in an S corporation.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	David and Louise Gitlitz, Phillip and Eleanor Winn v. Commissioner of Internal Revenue

TOPICS

s corporation tax · tax basis · tax deficiency · statutory interpretation · appellate procedure

PRACTICE AREAS

federal income taxation · S corporation taxation · appellate procedure

QUESTIONS PRESENTED

1. Whether the Tenth Circuit's prior judgment should be vacated and the case remanded to the Tax Court after the Supreme Court held that pass-through of an S corporation's untaxed discharge-of-indebtedness

income occurs before reduction of the corporation's tax attributes under 26 U.S.C. § 108(b).

2. Whether the taxpayers were entitled to judgment in their favor because the deficiency determinations depended exclusively on the sequencing issue resolved by the Supreme Court.

HOLDINGS

1. Under the Supreme Court's controlling decision, pass-through of an S corporation's untaxed discharge-of-indebtedness income to shareholders occurs before reduction of the corporation's tax attributes under 26 U.S.C. § 108(b).
2. The Tenth Circuit vacated its prior judgment and remanded to the Tax Court with directions to enter judgment in favor of the taxpayers.

KEY QUOTATIONS

> *"We therefore VACATE our prior judgment and REMAND the case to the Tax Court with directions to enter judgment in favor of taxpayers."* (at 771)

> *"This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel."* (at 771)

FACTUAL BACKGROUND

The taxpayers used untaxed discharge of indebtedness from an S corporation to increase their bases in the corporation's stock. The Commissioner determined that the taxpayers had tax deficiencies, and the taxpayers challenged those determinations. The validity of the deficiencies depended on whether the discharge-of-indebtedness income passed through to shareholders before or after reduction of the corporation's tax attributes.

PROCEDURAL HISTORY

The Commissioner assessed tax deficiencies against the Gitlitzes and Winns based on their use of untaxed discharge of indebtedness to increase their S corporation stock bases. The Tax Court upheld the deficiencies, and the Tenth Circuit affirmed, holding that attribute reduction under 26 U.S.C. § 108(b) preceded pass-through to shareholders. The Supreme Court reversed and held that pass-through occurs before attribute reduction, then remanded to the Tenth Circuit. Because the deficiency determinations turned exclusively on that sequencing issue, the Tenth Circuit vacated its prior judgment and remanded to the Tax Court to enter judgment for the taxpayers.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The prior Tenth Circuit judgment was vacated, and the case was remanded to the United States Tax Court with directions to enter judgment in favor of the taxpayers.

CASES CITED

- Gitlitz v. Commissioner of Internal Revenue, 531 U.S. 206, 121 S. Ct. 701, 148 L. Ed. 2d 613 (2001)
- Gitlitz v. Commissioner of Internal Revenue, 182 F.3d 1143 (10th Cir. 1999)

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