

UNITED STATES TAX COURT

Lowry v. Commissioner

49 T.C.M. 1246 (1985) · No. 15761-84 · Decided April 16, 1985

SUMMARY

The United States Tax Court dismissed petitioners' challenges to federal income tax deficiencies after they and their counsel failed to appear at scheduled trial dates and failed to respond to an order to show cause. The court held that Roy W. Lowry was collaterally estopped from denying fraud based on his conviction for income tax evasion and entered decisions for the deficiencies and fraud additions against him, while conceding the additions as to Ruth E. Lowry.

CASE DETAILS

COURT	United States Tax Court
WRITING FOR THE COURT	Cohen
JURISDICTION	USA
DECIDED	April 16, 1985
DOCKET	15761-84
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioners sought review of federal income-tax deficiencies and additions to tax. After petitioners and their counsel failed to appear for trial and failed to respond to an order to show cause, the Commissioner moved to dismiss for failure to properly prosecute.
PRECEDENTIAL VALUE	Unpublished Tax Court memorandum opinion; limited precedential value.
PARTIES	Roy W. Lowry, Ruth E. Lowry v. Commissioner of Internal Revenue

TOPICS

- tax deficiency
- tax fraud
- tax penalties
- tax court procedure
- default

PRACTICE AREAS

- federal income taxation
- Tax Court procedure
- tax fraud
- tax litigation

QUESTIONS PRESENTED

1. Whether the deficiency issues should be dismissed because petitioners failed to appear for trial and failed to prosecute the case.
2. Whether Roy W. Lowry was collaterally estopped by his criminal conviction from denying fraud for purposes of the additions to tax under section 6653(b).

HOLDINGS

1. A taxpayer's failure to appear at scheduled trials and failure to respond to an order to show cause justified dismissal of the issues concerning the correctness of the determined deficiencies.
2. Roy W. Lowry was collaterally estopped from denying fraud for the tax years at issue.

KEY QUOTATIONS

“By reason of their failure to appear, issues relating to the correctness of the deficiency will be decided against them, and respondent's motion to dismiss as to those issues is granted.” (at *448)

“Petitioner Roy W. Lowry is collaterally estopped from denying fraud as to the years in issue.” (at *448-*449)

FACTUAL BACKGROUND

The Commissioner determined that petitioners had failed to report income from Cal-Quad, Inc., a corporation of which Roy W. Lowry was majority shareholder and president. The deficiencies concerned tax years 1976, 1977, and 1978, and the Commissioner also determined fraud additions against Roy. Roy had been convicted under Internal Revenue Code section 7201 for income-tax evasion for the years at issue.

PROCEDURAL HISTORY

The Commissioner determined deficiencies for 1976 through 1978 and additions to tax against Roy W. Lowry under section 6653(b). The case was set for trial twice, but neither petitioners nor their counsel appeared. The Tax Court issued an order to show cause, received no response, granted the Commissioner's motion to dismiss as to the deficiency issues, and entered decision for the Commissioner; the Commissioner conceded the additions against Ruth E. Lowry.

DISPOSITION

dismissed

CASES CITED

- *Amos v. Commissioner*, 43 T.C. 50 (1964), *aff'd*, 360 F.2d 358 (4th Cir. 1965)