UNITED STATES TAX COURT

Owens v. Commissioner

45 T.C.M. 534 (1983) · No. 2665-74 · Decided January 17, 1983

SUMMARY

The United States Tax Court held that gambling-casino “tokes” received by the petitioners were taxable gross income rather than nontaxable gifts. Because the petitioners presented no evidence, the court sustained the deficiency and negligence addition, and it rejected their demand for a jury trial.

CASE DETAILS

COURT	United States Tax Court
WRITING FOR THE COURT	Fay, Judge
JURISDICTION	USA
DECIDED	January 17, 1983
DOCKET	2665-74
DISPOSITION	other
PROCEDURAL POSTURE	Petitioners sought review in the United States Tax Court of a federal income-tax deficiency and addition to tax determined by the Commissioner. Petitioners also demanded a jury trial.
STANDARD OF REVIEW	The Commissioner's deficiency determination is presumed correct, and the taxpayers bear the burden of proving it erroneous. Taxpayers also bear the burden of showing that an underpayment was not due to negligence.
PRECEDENTIAL VALUE	unpublished and nonprecedential memorandum opinion
PARTIES	George T. Owens, Sandra K. Owens v. Commissioner of Internal Revenue

TOPICS

tax deficiency · income tax · tax penalties · tax court procedure · gambling

PRACTICE AREAS

federal income taxation · tax litigation · tax penalties · gambling income

QUESTIONS PRESENTED

1. Whether money received by petitioners from casino patrons as "tokes" constituted taxable gross income rather than nontaxable gifts.
2. Whether petitioners were liable for the addition to tax for negligence under section 6653(a).
3. Whether petitioners had a right to a jury trial in the Tax Court.

HOLDINGS

1. Money received from casino patrons as "tokes" is not a gift and must be included in the taxpayer's gross income.
2. Petitioners were liable for the addition to tax under section 6653(a) because they failed to prove that any underpayment was not due to negligence.
3. There is no right to a jury trial in the Tax Court, and denial of a jury trial does not violate the Seventh Amendment.

KEY QUOTATIONS

> *"It is well settled that "tokes" are not gifts but must be included in a taxpayer's gross income."* (760)

> *"It is beyond question that there is no right to a jury trial in the Tax Court, and the denial thereof does not violate the Seventh Amendment."* (760)

FACTUAL BACKGROUND

The Commissioner determined that petitioners omitted tip income received from patrons of a gambling casino from their 1971 gross income. Petitioners contended that the money constituted nontaxable gifts. George T. Owens refused to testify or submit evidence and appeared solely to demand a jury trial.

PROCEDURAL HISTORY

The Commissioner determined a $787.24 deficiency and a $39.36 addition to tax under section 6653(a) for petitioners' 1971 federal income tax. Petitioners filed a Tax Court petition, asserting that casino tips, or "tokes," were nontaxable gifts. At trial, George T. Owens declined to testify or present evidence and appeared only to demand a jury trial. The Tax Court sustained the Commissioner's determination and entered decision for the respondent.

DISPOSITION

other

CASES CITED

- Olk v. United States, 536 F.2d 876 (9th Cir. 1976)
- Welch v. Helvering, 290 U.S. 111 (1933)
- Enoch v. Commissioner, 57 T.C. 781 (1972)

- Wickwire v. Reinecke, 275 U.S. 101 (1927)
- Browne v. Commissioner, 73 T.C. 723 (1980)
- Malone v. Commissioner, T.C. Memo. 1982-325
- Williams v. Commissioner, T.C. Memo. 1980-494