UNITED STATES CLAIMS COURT

Rocovich v. United States

18 Cl. Ct. 418 (1989) · Decided October 16, 1989

SUMMARY

The United States Claims Court dismissed an estate tax refund action for lack of subject matter jurisdiction because the estate had not paid the full amount assessed by the IRS before filing suit. The court held that the full-payment rule applied to taxes subject to an I.R.C. § 6166 installment election and rejected the plaintiff's equitable-estoppel argument based on the IRS's alleged delay in disallowing the election. The court also concluded that the IRS's failure to provide assessment notice did not invalidate the assessment for purposes of jurisdiction.

CASE DETAILS

COURT	United States Claims Court
WRITING FOR THE COURT	Nettesheim
JURISDICTION	USA
DECIDED	October 16, 1989
DISPOSITION	dismissed
PROCEDURAL POSTURE	The United States moved under RUSCC 12(b)(1) to dismiss an estate-tax refund action for lack of subject matter jurisdiction.
STANDARD OF REVIEW	On a jurisdictional motion to dismiss, unchallenged allegations are construed favorably to the plaintiff, but the court may inquire into jurisdictional facts through affidavits or other evidence. Rule 56 supplies the method for determining whether a factual dispute is genuine, and RUSCC 43(c) permits an evidentiary hearing to resolve disputed jurisdictional facts.
PRECEDENTIAL VALUE	Published Claims Court opinion
PARTIES	John G. Rocovich, co-executor of the estate of Carolyn B. Nettleton v. United States

TOPICS

estate tax · tax refunds · subject matter jurisdiction · tax court procedure · tax deficiency

PRACTICE AREAS

federal tax litigation | estate tax | tax refund jurisdiction | federal civil procedure

QUESTIONS PRESENTED

1. Whether the full-payment rule requires payment of the entire amount the IRS determined to be due before a refund action may be maintained in the Claims Court.
2. Whether Internal Revenue Code section 6166 creates an exception to the full-payment rule.
3. Whether the IRS should be equitably estopped from denying the estate's section 6166 election because it did not reject the election earlier.
4. Whether the IRS's failure to provide notice under Internal Revenue Code section 6303(a) invalidated the assessment for purposes of the full-payment rule.
5. Whether Revenue Procedure 79-55 required the IRS to notify the executor as soon as practicable that the section 6166 election was rejected.

HOLDINGS

1. Full payment of the amount the IRS has determined is due is a jurisdictional prerequisite to a tax refund action in the Claims Court; payment of only the amount conceded by the taxpayer is insufficient.
2. Internal Revenue Code section 6166 does not create an exception to the full-payment rule.
3. The IRS's failure to provide the statutory notice of assessment did not invalidate the assessment for purposes of the full-payment rule absent IRS action to enforce a lien.
4. The IRS was not equitably estopped from denying the estate's section 6166 election.
5. Revenue Procedure 79-55 did not require the IRS to notify Rocovich of rejection of the section 6166 election before the expiration of the statutory audit period, and the IRS did not abridge the guideline.

KEY QUOTATIONS

> *“Plaintiff must have paid the remaining $42,388.00 deficiency before jurisdiction can vest.”* (423)

> *“Plaintiff must have paid the remaining $42,388.00 deficiency before the Claims Court can exercise jurisdiction over his claim.”* (424)

> *“The IRS’ silence cannot be construed as a misrepresentation of fact.”* (425)

FACTUAL BACKGROUND

The estate of Carolyn B. Nettleton reported an estate-tax liability of $81,388 and elected to pay the remaining balance in installments under Internal Revenue Code section 6166. After an audit, the IRS determined that the estate owed an additional $127,324.45 and denied eligibility for the section 6166 deferral. Rocovich paid the audit deficiency and filed a refund claim, but had not paid the additional $42,388 that the IRS determined was due because the estate was ineligible for the deferral. He argued that the IRS's failure to promptly reject the election, and its notices concerning interest payments, justified equitable estoppel.

PROCEDURAL HISTORY

Rocovich filed an estate-tax refund claim with the IRS after paying part of the tax deficiency and then brought suit in the Claims Court when the IRS did not act on the claim within six months. The Government moved to dismiss, asserting that the full-payment rule barred jurisdiction. The court granted the motion and dismissed the complaint for lack of subject matter jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Hamlet v. United States, 873 F.2d 1414 (Fed. Cir. 1989)
- Land v. Dollar, 330 U.S. 731 (1947)
- Indium Corp. of America v. Semi-Alloys, Inc., 781 F.2d 879 (Fed. Cir. 1985), cert. denied, 479 U.S. 820 (1986)
- Christianson v. Colt Industries Operating Corp., 486 U.S. 800 (1988)
- Amerikohl Mining, Inc. v. United States, 16 Cl. Ct. 623 (1989)
- Flora v. United States, 357 U.S. 63 (1958), aff'd on rehearing, 362 U.S. 145 (1960)
- Tonasket v. United States, 590 F.2d 343, 218 Ct. Cl. 709 (1978)
- Haber v. United States, 17 Cl. Ct. 496 (1989)
- Levi Strauss & Co. v. Genesco, Inc., 742 F.2d 1401 (Fed. Cir. 1984)
- Macatee, Inc. v. United States, 214 F.2d 717 (5th Cir. 1954)
- Green v. United States, 618 F.2d 122, 220 Ct. Cl. 712 (1979)
- DiNatale v. United States, 12 Cl. Ct. 72 (1987)
- Rodewald v. United States, 231 Ct. Cl. 962 (1982)
- Diamond v. United States, 228 Ct. Cl. 493, 657 F.2d 1194 (1981), cert. denied, 459 U.S. 831 (1982)
- Johns-Manville Corp. v. United States, 855 F.2d 1556 (Fed. Cir. 1988), cert. denied, 109 S. Ct. 1342 (1989)
- Heckler v. Community Health Services, 467 U.S. 51 (1984)
- Henry v. United States, 14 Cl. Ct. 795 (1988), aff'd, 870 F.2d 634 (Fed. Cir. 1989)
- Parrish v. Loeb, 558 F. Supp. 921 (C.D. Ill. 1982)
- Greenberg v. United States, 1 Cl. Ct. 406 (1983)