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U.S. Tax Court: Statute of limitations if unreported PFIC gains

The U.S. Tax Court today issued an opinion addressing the interaction of the statute of limitations for an assessment under section 6501 with the rules for passive foreign investment company (PFIC) gains under section 1291.

The case is: *Toso v. Commissioner,* 151 T.C. No. 4 (September 4, 2018). Read the Tax Court's **opinion** [PDF 103 KB]

Summary

The taxpayers filed their federal income tax returns for 2006, 2007, and 2008, but did not report gains from sales of stock in PFICs.

Following the issuance of a "John Doe summons" to the taxpayers' bank in July 2008, the taxpayers filed amended returns for 2006, 2007, and 2008 to report items that were not reported on their original returns.

The IRS in January 2015 issued a notice of deficiency with respect to the 2006, 2007, and 2008 returns and imposing penalties. The notice of deficiency determined that amounts reported on the amended returns as long-term capital gains were gains from the sales of stocks in PFICs.

The taxpayers asserted that the additional assessments were beyond the three-year limitations period under section 6501. The IRS countered that the limitations period was extended to six years because the taxpayers had omitted an amount of gross income in excess of 25% of the gross income reported on the return pursuant to section 6501(e)(1)(A)(i).

The Tax Court held that gains from sales of PFIC stocks that were excluded from gross income under section 1291 for the current year (i.e., "non-current-year" PFIC gains”) were not counted as gross income for purposes of the six-year limitations period under section 6501(e)(1)(A)(i). Thus, the court concluded that the assessment of the 2007 and 2008 deficiencies was time-barred.

However, the court found that the deficiency for 2006 was not time-barred under section 6501(e)(1)(A)(i) because after excluding the non-current-year PFIC gains, the taxpayers were found to have omitted an amount from their 2006 return that was greater than 25% of the gross income reported on that return.

The taxpayers also had asserted that to the extent an assessment was not time-barred, any deficiency would be reduced by offsetting their PFIC gains with PFIC losses in applying section 1291. The Tax Court rejected this contention, finding that section 1291 does not provide for offsetting or netting PFIC gains with PFIC losses.