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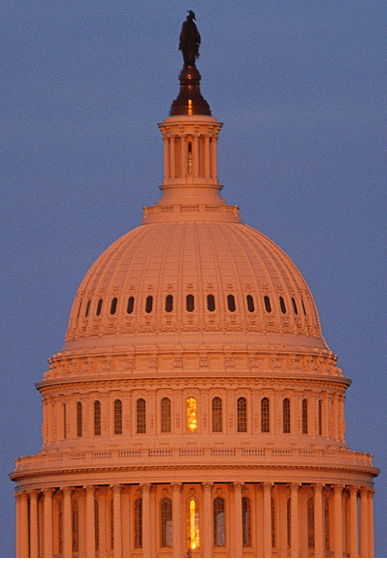

No. 2022-145
May 11, 2022

Ninth Circuit: Tax return considered filed when sent in response to IRS inquiry; Tax Court reversed

The U.S. Court of Appeals for the Ninth Circuit today reversed the Tax Court's grant of summary judgment in favor of the government, in a case involving whether a taxpayer should be treated as filing its tax return when the IRS informs the taxpayer that its tax return is missing, and the taxpayer responds by giving the IRS the tax return in the manner requested.

The case is: *Seaview Trading, LLC v. Commissioner*, No. 20-72416 (9th Cir. May 11, 2022). Read the Ninth Circuit's **decision** [PDF 495 KB] that includes a dissenting opinion.

Summary

The taxpayer believed it filed its 2001 partnership tax return (Form 1065) in July 2002, but the IRS has no record of receiving it. In 2005, in response to a letter from an IRS revenue agent notifying it that the IRS had not received its 2001 federal income return, the taxpayer faxed the agent a signed copy of Form 1065. The next month, the same IRS agent informed the taxpayer that its 2001 return had been selected for examination and requested further information, including all copies of the signed Form 1065. In 2006, during an interview of the taxpayer's accountant, the IRS noted that the accountant had previously provided a signed tax return and introduced Form 1065 as an exhibit. In 2007, the taxpayer's counsel mailed another signed copy of the 2001 Form 1065 to an IRS attorney.

In 2010, the IRS issued a final partnership administrative adjustment for 2001. In that notice, the IRS stated that it had no record of a tax return filed by the taxpayer for 2001, but that the taxpayer had provided a copy of the return it claimed to have filed. The notice also indicated that none of the income/loss/expense amounts in the 2001 return were allowable. The taxpayer filed a petition in the Tax Court challenging the adjustment of losses. The Tax Court held that the taxpayer did not "file" a tax return when it faxed a copy to the IRS agent or mailed a copy to the IRS counsel and, in any case, the copies of the 2001 Form 1065 sent to the IRS in 2005 and 2007 were not "returns." The taxpayer and the IRS then settled all their disputes but reserved the taxpayer's right to appeal the Tax Court's decision.

The Ninth Circuit first addressed whether the limitations period for adjustment of partnership losses under section 6229(a) had begun to run. This issue turns on whether the taxpayer's tax return was ever "filed." The Ninth Circuit held that when (1) an IRS official authorized to obtain and receive delinquent tax returns informs a

taxpayer that a tax return is missing and requests that tax return, (2) the taxpayer responds by giving the IRS official the tax return in the manner requested, and (3) the IRS official receives the tax return, then the taxpayer has "filed" a tax return for purposes of section 6229(a). Accordingly, the Ninth Circuit concluded that the taxpayer's 2001 tax return was filed when the IRS agent requested the missing return, the taxpayer delivered it, and the IRS acknowledged receipt during the auditing process. Because the return was filed in 2005, the IRS's notice of a final partnership administrative adjustment in 2010 was untimely.

The Ninth Circuit next addressed whether the taxpayer's belated submission of its Form 1065 qualified as a "return." The Ninth Circuit applied the test under *Beard v. Commissioner*, 82 T.C. 766, 777 (1984): (1) the document must purport to be a return, (2) it must be executed under penalty of perjury, (3) it must contain sufficient data to allow calculation of tax, and (4) it must represent an honest and reasonable attempt to satisfy the requirements of the tax law. Applying those factors, the Ninth Circuit concluded that the Form 1065 was a "return."

The dissenting opinion asserted that because it is undisputed that the taxpayer failed to file its return to the correct location in Ogden, Utah, in the manner prescribed in the applicable statute and regulations, either on time or belatedly, that conclusion should end the inquiry and the Tax Court should be affirmed.