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TaxNewsFlash

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Ninth Circuit: Tax return not considered filed when sent in response to IRS inquiry; Tax Court affirmed

The U.S. Court of Appeals for the Ninth Circuit today affirmed the Tax Court's decision concluding that the IRS's notice of final partnership administrative adjustment disallowing a loss was timely, as the taxpayer did not "file" its 2001 partnership return, either when it faxed a copy of the return to the IRS revenue agent or when it mailed a copy to the IRS attorney.

The case is: *Seaview Trading, LLC v. Commissioner*, No. 20-72416 (9th Cir. March 10, 2023). Read the Ninth Circuit's decision [PDF 253 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 the taxpayer 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 disallowing a $35.5 million loss claimed by the taxpayer. 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.

A three-judge panel of the Ninth Circuit reversed the Tax Court's decision and held the IRS's administrative adjustment was barred by the statute of limitations. Read ***TaxNewsFlash.*** The Ninth Circuit subsequently voted to rehear the case en banc.

The en banc court explained that the taxpayer did not meticulously comply with Treas. Reg. §1.6031(a)-1(e) designating the IRS Ogden Service Center as the place for filing and the return was never forwarded to Ogden. The court held that neither the taxpayer's faxing a copy of their delinquent 2001 tax return to an IRS revenue agent in 2005, nor mailing a copy to an IRS attorney in 2007, qualified as a "filing" of the partnership's return, and therefore the statute of limitations did not bar the IRS's readjustment of the partnership's tax liability.

The dissenting opinion would have reversed the Tax Court's decision because the IRS's current position was inconsistent with the Code, its regulations, and its own guidance. The IRS has told taxpayers for over 20 years that they can file late or untimely tax returns with requesting IRS officials, and also encouraged taxpayers to file their delinquent returns directly with the revenue officer instead of mailing them to the appropriate IRS Service Center.

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