Steve Leimberg's Asset Protection Planning Email Newsletter - Archive Message #436
Date: 17-Jul-23
From: Steve Leimberg's Asset Protection Planning Newsletter
Subject: Marc Soss on Sanders v. Commissioner: When Seconds Actually Count

"On June 14, 2023, the United States Tax Court issued an opinion in Sanders v. Comr. under which it held that it lacked jurisdiction over the taxpayer's Petition for Redetermination. The reason for the ruling was that the taxpayer had filed his Petition after the deadline. To be exact, eleven (11) seconds late."

Marc Soss provides members with his analysis of *Sanders v. Commissioner.*

Marc Soss' practice focuses on estate planning, probate and trust administration, and corporate law in Southwest Florida. Marc is a frequent contributor to **LISI** and has published articles in the Florida Bar, Rhode Island Bar, North Carolina Bar, Association of the United States Navy and Military.Com. Marc is a retired United States Navy Supply Corps Officer.

Here is his commentary:

EXECUTIVE SUMMARY:

On June 14, 2023, the United States Tax Court issued an opinion in *Sanders v. Comr*. under which it held that it lacked jurisdiction over the taxpayer's Petition for Redetermination (the "Petition"). The reason for the ruling was that the taxpayer had filed his Petition after the deadline. To be exact, eleven (11) seconds late.

FACTS:

On September 8, 2022, the IRS sent a notice of deficiency to the taxpayer. The notice provided the taxpayer with a deadline of December 12, 2022, for filing a petition for redetermination with the Tax Court. The taxpayer then proceeded to establish an account under which he could electronically file the Petition.

During the evening of December 12, 2022, the taxpayer started the process of filing the Petition, at approximately 9:59 p.m. EDT. The taxpayer then made multiple attempts to download and file the necessary forms on his cellular phone. Shortly before midnight the taxpayer switched to a computer to download and file the necessary forms before the midnight deadline. On December 13, 2023, at 00:00:11.693 (11 seconds after midnight) the Petition was successfully filed.

On January 25, 2023, the IRS filed a Motion to Dismiss arguing a lack of jurisdiction. The IRS opined that the Petition was filed late because the period for filing the petition ended at 11:59 p.m. on December 12, 2022. The IRS also argued that because the IRS filing system was operational the entire time there was no basis to postpone the filing deadline. In response, the taxpayer argued that he had made multiple unsuccessful attempts to promptly file the Petition before the deadline. In support of the taxpayer, the Center for Taxpayer Rights filed an amicus brief and argued that the "[P]etition should be treated as filed at the time that the taxpayer relinquished control of it," the timely mailing rule, and for the "Court to view the timeliness of an electronically filed petition "through the lens of equitable tolling."

In reliance on the decision in *Hallmark Research Collective v. Commissioner*, 159 T.C. No. 6 (2022), and a finding that the taxpayer's petition was not timely filed, the Tax Court explained that "its jurisdiction is limited, and in deficiency cases its jurisdiction is limited to petitions that are timely filed. It lacks authority to extend the deadline." The Court further emphasized that a "petition is filed when it is received by the court, and an electronically filed petition "will be considered timely filed if it is electronically filed at or before 11:59 p.m., eastern time, on the last day of the applicable period for filing." The Court also articulated a related principle, that is, a "prudent litigant or lawyer must allow time for difficulties on the filer's end."

COMMENT:

The Tax Court ruling runs contrary to the U.S. Supreme Court ruling In *Boechler, P.C. v. Commissioner,* 142 S.Ct. 1493 (2022). *Boechler* involved a taxpayer who filed a case in the U.S. Tax Court but was late in making the filing for a collection due process hearing. This case also articulates why a last-minute filing should be avoided as they leave “little margin for error.” The Court also articulated a related principle, that is, a “prudent litigant or lawyer must allow time for difficulties on the filer’s end.”

Fortunately, the ruling does not leave the taxpayer without options. Since the U.S. Tax Court did not reach a ruling on the merits of the case, the taxpayer may be able to get the case heard by the U.S. District Court. This option would require the taxpayer to pay the tax up-front and sue for a refund in the U.S. District Court. Alternatively, the taxpayer could wait for the IRS’s collection actions and dispute the liability by filing for a collection due process hearing.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Marc J. Soss

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CITES:

Sanders v. Comr., 160 TC No. 16 (June 20, 2023); Hallmark Research Collective v. Commissioner, 159 T.C. No. 6 (2022; *Boechler, P.C. v. Commissioner,* 142 S.Ct. 1493 (2022).