

ACTION ON DECISION

Subject: Charles E. Hurt v. United States

Citation: 70 F.3d 1261, 76 AFTR2d 95-7815 (4th  
Cir. 1995), aff'g, 72 AFTR2d 93-5379  
(S.D.W.V. 1993)

Issue:

Whether the Service was entitled to assess and collect statutory interest on the amount of tax and additions to tax embodied in a Tax Court decision that resulted from a settlement agreement entered into by the taxpayers and the Service.

Discussion:

After the Hurts filed a Tax Court petition, the Hurts and the Service executed and filed with the Tax Court a stipulation of settled issues and a proposed stipulated decision. The Tax Court entered its decision in accordance with the stipulation of settled issues and the proposed stipulated decision. Neither the Tax Court decision nor the stipulation of settled issues addressed statutory interest.

The Service subsequently assessed and collected the deficiencies in tax and additions to tax, plus statutory interest. The Hurts filed a timely claim for refund for the amounts attributable to interest, which the Service denied. The Hurts filed a suit for refund, and the district court granted the taxpayers' motion for summary judgment. The district court concluded that the Tax Court decision was a pro forma acceptance of the stipulation of settled issues, and that the parties' intent was to settle all issues in the Tax Court case by stipulation. The district court further concluded that statutory interest was a proper subject of the Tax Court litigation, and that the term "taxes," as used in the stipulation of settled issues, included statutory interest.

A divided panel of the Court of Appeals for the Fourth Circuit affirmed the judgment of the district court. In the appellate court's view, the Service intended to waive its right to statutory interest. Because the purpose of a settlement agreement is to put an end to litigation, the court of appeals concluded that, in the absence of specific language to the contrary, all antecedent claims with respect to the tax year at issue are merged into a settlement agreement entered into by the parties to a court proceeding.

The court of appeals erred when it determined that the Service waived its right to statutory interest under I.R.C. § 6601(a) in the prior Tax Court proceeding. The assessment of

deficiency interest under I.R.C. § 6601 is mandatory, *United States v. Faulkner*, 119 F.R.D. 390, 61 AFTR2d 88-1375 (N.D. Ill. 1988); *Pozgar v. Commissioner*, T.C. Memo. 1980-451, and the Tax Court lacks jurisdiction to determine the taxpayer's liability for deficiency interest even when it is persuaded that the parties had agreed on the amount of interest due. *Stauffacher v. Commissioner*, 97 T.C. 453, 457 (1991). Thus, a taxpayer is liable for deficiency interest under I.R.C. § 6601 even though the decision of the Tax Court does not contain any provision relating to the taxpayer's liability for interest on the deficiency. *Symonides v. Crenshaw*, 45 AFTR 1171 (E.D. Va. 1953).

In 1988, Congress extended the Tax Court's jurisdiction to disputes that arise over the Service's post-decisional computation of interest paid on deficiencies. I.R.C. § 7481(c); see also Tax Court Rule 261. However, Congress narrowly tailored the Tax Court's jurisdiction over deficiency interest under I.R.C. § 7481(c) knowing that the Tax Court does not determine interest in its decisions, but that interest is determined later by the Service. H.R. Conf. Rep. No. 4333, 100th Cong., 2d Sess. 232 (1988), 1988-3 C.B. 473, 722. Thus, deficiency interest is not addressed in stipulated decisions and stipulations of settled issues filed with the Tax Court because it would be superfluous to address issues that are not in dispute in the Tax Court proceeding. See I.R.M. (35)8(12)8.

Based on the foregoing, we disagree with the decision of the court of appeals in *Hurt*. As a result, the Service will continue to litigate this issue, distinguishing the facts in *Hurt*, if appropriate, in all circuits.

Recommendation:

Nonacquiescence

/s/

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Reviewers:

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/s/

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