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RUESCH V. COMM'R

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RUESCH V. COMM'R

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ABSTRACT

Case Name: Vivian Ruesch v. Commissioner, 154 T.C. No. 13 (Jun. 25, 2020).

Jurisdiction: U.S.T.C.

Petitioner: Vivian Ruesch

Respondent: Commissioner of the Internal Revenue Service.

Concepts: Tax Delinquencies

Nature of Case: Whether the U.S. Tax Court has jurisdiction to decide Ms. Ruesch’s underlying liability for penalties assessed by the Internal Revenue Services (IRS); and whether Ms. Ruesch’s claim against the IRS is moot due to the IRS’s reversal of their classification of her as seriously delinquent?

INTRODUCTION

After failing to pay fees assessed penalties under I.R.C. sec. 6038 totaling \$160,000, Ms. Ruesch’s liability was certified by the IRS to the Secretary of State as a “seriously delinquent tax” debt within the meaning of I.R.C. sec. 7345(b). *Vivian Ruesch v. Commissioner*, 154 T.C. No. 13, 4 (June 25, 2020). Ms. Ruesch filed a petition challenging the correctness of the IRS’s certification and her underlying liability for the penalties. *Id.* at 1. Subsequently, the IRS discovered that Ms. Ruesch timely requested a collection due process hearing which suspended the collection of her tax debt. *Id.* As a result, her debt was no longer “seriously delinquent and the IRS reversed its certification as erroneous and notified the Secretary of State. *Id.*

The IRS filed a motion to dismiss Ms. Ruesch’s claim for lack of jurisdiction in regards to Ms. Ruesch’s challenge to her underlying liability for the penalties. *Id.* Additionally, the IRS filed a motion to dismiss Ms. Ruesch’s claim for mootness, given that the IRS reversed her classification as “seriously delinquent.” *Id.* Ms. Ruesch objected to both motions. *Id.*

The two important issues at dispute are: (1) whether the U.S. Tax Court has jurisdiction to decide Ms. Ruesch’s underlying liability for penalties assessed by the Internal Revenue Services (IRS); and (2) whether Ms. Ruesch’s claim against the IRS is moot due to the IRS’s reversal of their classification of her as seriously delinquent. *Id.* at 2. This case sets forth the court’s jurisdiction over claims brought under I.R.C. section 7345 and how disputes are to be addressed when a claimant challenges their underlying liabilities for a penalty assessed by the IRS.

BACKGROUND

In 2015, the Fixing America's Surface Transportation Act, known as the "FAST Act", was enacted in efforts to provide long-term funding certainty for surface transportation. U.S. Department of Transportation, <https://www.transportation.gov/fastact> (last visited Apr. 14, 2021). The FAST Act enables State and local government to move forward with transportation projects with the confidence that they will have a Federal partner over the long term. *Id.* Under the Internal Revenue Code (I.R.C.) section 7345, if the Commissioner of the Internal Revenue notifies the Secretary that an individual has a seriously delinquent tax debt, the Secretary transmits the Commissioner's certification to the Secretary of State for action with respect to deny, revoke, or limit a passport pursuant to section 32101 of the FAST Act. 26 USCS § 7345(1).

The I.R.C. section 7345(b) provides that "seriously delinquent tax debt" is defined an "unpaid, legally enforceable Federal tax liability of an individual," which has been assessed, is greater than \$50,000, and which such person has been given a notice of lien with respect to such filing or a levy is made pursuant to section 6331. 26 USCS § 7345. The Commissioner may reverse its certification of seriously delinquent tax debt if such debt is found to be erroneous or if the debt with respect to such certification is fully satisfied or ceases to be seriously delinquent tax debt by reason of subsection (b)(2). 26 USCS § 7345(c)(1). Additionally, I.R.C. section 7345(b)(2)(B)(i) provides that the term seriously delinquent tax debt should not include a debt with respect to which collection is suspended with respect to the individual because an election under subsection (b) or (c) of section 6015 [26 USC § 6015] is made or relief under subsection (f) of such section is requested. 26 USC § 7345.

Under 26 USCS § 7345(e), the United States Tax Court has jurisdiction to review petitions brought by individuals who received a seriously delinquent certification by the Commissioner to determine whether the certification was erroneous or whether the Commissioner has failed to reverse the certification. 26 USCS § 7345(e)(1). Additionally, if the court determines that such certification was erroneous, the court may order the Secretary to notify the Secretary of State that such certification was erroneous. 26 USCS § 7345(e)(2).

CASE DESCRIPTION

Section 7345, labeled as the “Revocation or Denial of Passport in Case of Certain Tax Delinquencies,” provides that if the Commissioner certifies that an individual has a seriously delinquent tax debt the Secretary of Treasury shall transmit such certification to the Secretary of State for action with respect to denial, revocation, or limitation of a passport. *Ruesch*, 154 T.C. No. 13 at 3. Furthermore, a taxpayer injured by such action may petition the U.S. Tax Court to determine whether the certification was erroneous or whether the Commissioner failed to reverse the certification. *Id.*

Here, the IRS assessed \$160,000 of penalties against Ms. Ruesch which she did not pay upon notice and demand. *Id.* Subsequently, the Commissioner certified Ms. Ruesch as an individual owing a “seriously delinquent tax debt.” *Id.* In response to the Commissioner’s certification, Ms. Ruesch filed a petition seeking three forms of relief: “(1) redetermination of the penalties assessed against her, (2) a determination of that the Commissioner erred in certifying her as a person with a seriously delinquent tax debt, and (3) a determination that the Commissioner erred in failing to reverse his certification.” *Id.* After Ms. Ruesch filed her petition challenging the Commissioner’s certification, the IRS discovered that it had made coding errors in regards to Ms. Ruesch’s tax debt and reversed its certification of Ms. Ruesch’s tax debt as seriously delinquent. *Id.* at 6.

Under I.R.C. sec. 7345, the court held that it has jurisdiction to consider whether the taxpayer’s assessed Federal tax liability exceeds \$50,000, whether the IRS has commenced collection action with respect to the liability, whether collection of the tax debt is suspended because of a CDP hearing pending, or whether the taxpayer is paying the tax debt in a timely manner when assessing whether the Commissioner erred in certifying that a tax payer owes a seriously delinquent debt. *Id.* at 12. However, the court found that it does not have jurisdiction to consider Ms. Ruesch’s challenge to her underlying liabilities for the penalties. *Id.* The court also found that it does not have jurisdiction to review Ms. Ruesch’s challenge to the Commissioner’s certification of her liabilities as seriously delinquent. *Id.* at 14. Although the court acknowledged that it does have jurisdiction to review Ms. Ruesch’s challenge to the IRS’s certification, Ms. Ruesch’s challenge was moot because the IRS already reversed its certification as erroneous and notified the Secretary of State. *Id.* at 16.

Ms. Ruesch contended that her case was not moot and will not become moot until the IRS unconditionally abates the penalties and withdraws its filing with prejudice. *Id.* at 18. The court disagreed. The court reaffirmed its finding that Ms. Ruesch case was moot due to two

intervening events: (1) the Commissioner's reversal of his certification and (2) his notification to the Secretary of State that the certification was erroneous. *Id.* at 19. Additionally, the court held that there was no live controversy between the parties; and therefore, the case was moot.

CONCLUSION

The two important issues presented in the case are: (1) whether the U.S. Tax Court has jurisdiction to decide Ms. Ruesch's underlying liability for penalties assessed by the Internal Revenue Services (IRS); and (2) whether Ms. Ruesch's claim against the IRS is moot due to the IRS's reversal of their classification of her as seriously delinquent. *Id.* at 2.

The court found that the U.S. Tax Court has jurisdiction over petitions challenging the certification of an individual's debt as seriously delinquent. *Id.* at 10. However, the court held it did not have jurisdiction to determine Ms. Ruesch's underlying penalties assessed by the IRS. *Id.* at 12. Additionally, the court found that Ms. Ruesch's claim against the IRS was moot due to the Commissioner's reversal of its classification of her tax debt as seriously delinquent and the Commissioner's notification to the Secretary of State that such certification was erroneous.



Posted by Alexis Pickins

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