

ACTION ON DECISION

SUBJECT: Montgomery v. Commissioner
122 T.C. 1 (2004)

Issue: Whether a taxpayer is barred from challenging the existence or amount of the underlying tax liability for a tax period in a collection due process (CDP) hearing under I.R.C. § 6330 solely because the tax liability was reported on the taxpayer's tax return for that period.

Discussion: The taxpayers filed an income tax return for 2000 but did not pay the total amount of tax reported due on the return. The Service assessed the full amount of the tax reported on the return and proposed to levy on taxpayers' property for unpaid tax, penalties and interest. The taxpayers exercised their right to a CDP hearing under section 6330 and the appeals officer determined that the levy should be allowed to proceed. The taxpayers appealed to the Tax Court. The only issue raised by the taxpayers in their petition for review of the notice of determination in the Tax Court was a challenge to the amount of their underlying tax liability for 2000. The Service filed a motion for summary judgment arguing that the taxpayers were barred from disputing their underlying tax liability in the CDP proceeding because the term "underlying tax liability" in section 6330(c)(2)(B) did not include tax reported on a tax return.

Section 6330(c)(2)(B) provides that a taxpayer may raise at a CDP hearing a challenge to the existence or amount of the underlying tax liability for any tax period if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Section 6330 does not define the term "underlying tax liability," and the legislative history and regulations under section 6330 are silent as to the meaning of the term. In the motion for summary judgment, the Service took the position that the term refers to a tax liability determined by the Service in excess of the tax liability reported by a taxpayer on the taxpayer's tax return.

The Tax Court rejected the Service's interpretation of "underlying tax liability." Finding no ambiguity in the "plain language of section 6330(c)(2)(B)," the Tax Court concluded that the term "underlying tax liability" encompasses the amounts the Service assessed for a particular tax period, including amounts assessed as deficiencies, amounts "self-assessed" under section 6201(a) or a combination of such amounts. The Tax Court observed that section 6330(c)(2)(B) would bar a person who had received a statutory notice of deficiency from challenging the underlying tax liability for that year, without regard to whether such liability was self-assessed or assessed as a deficiency. The Tax Court held "that section 6330(c)(2)(B) permits petitioners to challenge the existence or amount of the tax liability reported on their original income tax return because they have not received a notice of deficiency for 2000 and they have not otherwise had an opportunity to dispute the tax liability in question." 122 T.C. at 9 (footnote omitted).

The holding of the Tax Court is not plainly inconsistent with the statute or legislative history.

Recommendation: Acquiescence

Reviewers:

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