United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued March 4, 2025
Decided March 18, 2025

Before

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1184

SOLID GROUND TRANSPORTATION, INC., et al., *Petitioners-Appellants*,	Appeal from the United States Tax Court.
	No. 19604-22R
v.	
COMMISSIONER OF INTERNAL REVENUE, *Respondent-Appellee*.	Ronald L. Buch, *Judge*.

O R D E R

Solid Ground Transportation established an Employee Stock Ownership and Profit-Sharing Plan ("the Plan") in 2013. After the Internal Revenue Service investigated Solid Ground and the Plan, an IRS agent sent two letters to the company. Over nearly 20 pages, the agent summarized the investigation of tax years beginning in "2018"; concluded that, beginning in "2018," the Plan's trust was "no longer tax-exempt"; invited the company to respond to that conclusion; and asked for documents from 2018 through 2021. On two pages of the letters, the agent referenced "2013" instead of "2018." In response to these letters, Solid Ground petitioned the United States Tax Court to declare that the Plan's trust was tax exempt from 2013 onward. *See* I.R.C. § 7476(a)(1). The IRS later sent to Solid Ground "a final non-qualification" letter for 2018 to 2021, prompting Solid Ground to file another petition contesting the determination from 2018 onward. Treating the agent's references to "2013" as "scrivener's error[s]," the Tax Court sua sponte dismissed the first petition as duplicating the second, precipitating this appeal. Because Solid Ground filed the first petition prematurely—before a "final" determination—we vacate the Tax Court's dismissal and remand to the Tax Court to dismiss the first petition for lack of jurisdiction.

After investigating Solid Ground, the IRS sent the company two letters about tax materials from 2018. In the first letter, from June 2022, a revenue agent told the company that the agent had "completed reviewing all the information and documents" for the plan year ending "December 31, 2018," and asked Solid Ground to "provide any responses" to the issues the agent identified "within 20 days from the date of this letter." In the next 17 pages of the letter, the agent summarized those issues. Each page referenced the "Year/Period Ended" as "December 31, 2018," and the first page of the summary noted that the Plan was "under examination for the plan year ending December 31, 2018." On the last page, the agent concluded that the Plan was disqualified and its trust was "no longer tax-exempt" for the year ending "2013," and subsequent plan years. A month later, in July, the IRS sent a document request. The revenue agent sought "Form 1041 for plan years 2018, 2019, 2020, and 2021" because "[o]nce the plan is disqualified, the earnings that the Trust assets' realized are taxable." Again, the agent restated that the Plan was not qualified and the trust was not tax-exempt "for the plan year ending December 31, 2013, and subsequent plan years."

Solid Ground and the Plan responded with a petition in the Tax Court. In it, they challenged the disqualification and requested a ruling that the Plan was qualified and the trust was tax-exempt for "2013" and subsequent years. The Commissioner moved to dismiss the petition for lack of jurisdiction. The agency argued that there was no "final" determination conferring jurisdiction on the Tax Court under I.R.C. § 7476(a), because the June letter reflected only a preliminary view, and the July letter was just a document request.

Meanwhile, six months later (in 2023), the Commissioner sent Solid Ground a "final non-qualification letter" with a "final" disqualification of the Plan and the trust for tax-exempt status for "2018, and subsequent plan years." Solid Ground and the Plan filed a second petition, arguing that the Plan was qualified and the trust was tax-exempt for 2018 and beyond.

The Tax Court dismissed the first petition, prompting the current appeal. It ruled that it did not need to decide whether it had jurisdiction because both petitions related to "the same plan and period"; therefore, it concluded, the petitions were duplicative and the court could dismiss the first one. Solid Ground and the Plan moved for reconsideration. They argued that the court erroneously treated the two petitions as duplicative, because the first petition covered "2013" and later years, while the second one concerned "2018" and later years. The court denied the motion. It reasoned that the two references in the June and July letters to "2013" were merely "scrivener's error[s]." The second petition is still pending.

Solid Ground appeals the dismissal, but we must decide whether the Tax Court had jurisdiction to consider the first petition. *See Hay v. Ind. State Bd. of Tax Comm'rs*, 312 F.3d 876, 879 (7th Cir. 2002). "The Tax Court is a court of limited jurisdiction, and possesses only such adjudicatory powers as Congress has expressly conferred on it in the Internal Revenue Code." *Sanders v. C.I.R.*, 813 F.2d 859, 861 (7th Cir. 1987); *see also* I.R.C. § 7442. Under I.R.C. § 7476(a)(1), the Tax Court has jurisdiction over "a case of actual controversy" involving "a determination … with respect to the initial qualification or continuing qualification of a retirement plan." The appellants argue that this text covers "any" determination from the Commissioner, including any statements in the June and July letters. The Commissioner replies that the text requires an "actual controversy" over the "continuing qualification of a retirement plan," *id.* § 7476(a)(1), and that "no proceeding may be initiated" until "after" the Commissioner mails notice of the "determination with respect to the qualification of the plan," *id.* § 7476(b)(5). The Tax Court lacked jurisdiction over the first petition, the Commissioner concludes, because the Commissioner had not yet mailed notice about disqualification; thus, the Tax Court should have dismissed it for lack of jurisdiction.

We agree with the Commissioner. The first petition contested only the views expressed by a revenue agent in his letters from June and July of 2022. The June 2022 letter merely told Solid Ground that the agent had reviewed tax materials, arrived at a conclusion, and invited a response to the agent's report "within 20 days." By its own terms, it was not a final disqualification from the Commissioner. Likewise, the July letter just reaffirmed the agent's conclusions and requested documents. In contrast, the letter received by Solid Ground in 2023 came from the "IRS Commissioner," described itself as a "final determination," and notified Solid Ground that it could "petition the

U.S. Tax Court for a declaratory judgment on the qualification of this plan." Though the case law addressing this statutory language is sparse, § 7476 states seven times that there must be a "determination." *See also High Adventure Ministries, Inc. v. C.I.R.*, 80 T.C. 292, 298 (1983) ("[Jurisdiction] is limited to instances where the respondent has issued an adverse determination letter[.]"); *Shut Out Dee-Fence, Inc. v. C.I.R.*, 77 T.C. 1197, 1201 (1981) ("The receipt of a determination letter is a jurisdictional requirement to bringing a declaratory judgment action in this Court."). Solid Ground filed the first petition before receiving a determination. The Tax Court therefore lacked jurisdiction over the first petition.

Accordingly, we VACATE the Tax Court's order and REMAND to the Tax Court to dismiss the first petition for lack of jurisdiction.