



TaxNewsFlash

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Third Circuit: Taxpayer's petition cannot be dismissed by Tax Court on grounds of mootness

The U.S. Court of Appeals for the Third Circuit today vacated a decision of the U.S. Tax Court dismissing the taxpayer's petition on grounds of mootness because the IRS had already withheld tax refunds owed to the taxpayer equal to the amount of the disputed tax.

The case is: *Zuch v. Commissioner*, No. 22-2244 (3rd Cir. March 22, 2024). Read the Third Circuit's [decision](#)

Summary

The IRS sent the taxpayer a notice informing her that it intended to levy on her property to collect unpaid tax. The taxpayer challenged the levy, arguing that she had prepaid the tax. The IRS Independent Office of Appeals sustained the levy, and the taxpayer petitioned the Tax Court for review of that decision.

While the issue was being litigated in the Tax Court over several years, the IRS withheld tax refunds owed to the taxpayer and applied them to what it said was her unpaid balance, satisfying it in full. When, according to the IRS's accounting, there was no more tax to be paid, the IRS filed a motion to dismiss the Tax Court proceeding for mootness, and the Tax Court granted the motion.

The Third Circuit vacated the Tax Court's dismissal because it found that the taxpayer's claim was not moot, and it remanded the case to the Tax Court to determine whether the taxpayer's petition is meritorious. The Third Circuit stated:

The dispute comes down to this: whether, in the midst of litigation over a contested tax liability, the IRS is free to deprive the Tax Court of jurisdiction by the expedient of taking the taxpayer's tax refunds and applying them to that liability. The answer is no. The IRS's arrogation to itself of the power to eliminate pre-deprivation judicial review of liability by seizing a taxpayer's money to cover a disputed debt is not supported by relevant statute, common law (incorporated into statute), or mootness principles.

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