

PUBLICATION

Sixth Circuit Adopts The Price Test For Innocent Spouse Relief In Erroneous-Deduction Cases

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On February 17, 2010, the Sixth Circuit Court of Appeals adopted the Price test for innocent spouse relief cases involving erroneous deductions. *Greer v. Comm'r.*, 6th Cir., No. 09-1420 (Feb. 17, 2010). The *Price* test was originally articulated by Ninth Circuit in *Price v. Comm'r.*, 887 F.2d 959 (9th Cir. 1989) and has since been adopted by the Second Circuit, Fifth Circuit, Seventh Circuit, Eighth Circuit and Eleventh Circuit. Additionally, the Sixth Circuit's ruling is a departure from the United States Tax Court's ("Tax Court") practice of applying the "knowledge-of-the-transaction" test to all innocent spouse relief cases (i.e. omitted income cases and erroneous-deduction cases). The Sixth Circuit, however, still applies the "knowledge-of-the-transaction" test for innocent spouse relief cases based on omitted income.

In *Greer*, the Sixth Circuit applied the *Price* test to analyze whether the Tax Court's decision to deny innocent spouse relief should be affirmed. In applying the Price test, the Sixth Circuit looked at whether a reasonably prudent person in the taxpayer's position could be expected to know that the tax return contained a substantial understatement of taxable income at the time the taxpayer signed the return. To resolve this inquiry the Sixth Circuit considered the following four factors, commonly referred to as the *Price* factors: (1) the taxpayer's education; (2) the taxpayer's involvement in the family's financial affairs; (3) the presence of unusual or lavish expenditure's beyond the family's norm; and (4) the other spouse's evasiveness or deceitfulness concerning the family's finances. Additionally, the Sixth Circuit noted that the *Price* test because of a prior Sixth Circuit case adopting a similar (although not identical) standard, but found that three of the four Price factors weighed against the taxpayer. In reviewing the Tax Court's decision, the Sixth Circuit held that the Tax Court's findings with respect to the *Price* factors were incorrect, but not "clearly erroneous."

Summary

It is interesting to note that the *Greer*

Additionally, taxpayers and tax practitioners under the jurisdiction of the Sixth Circuit, and other Circuits adopting the *Price* test, should give careful consideration to possibly litigating innocent spouse relief claims in Federal District Court rather than the Tax Court because of the *Price* test.

Should you have any questions or otherwise wish to discuss this recent development, please contact any attorney in the Firm's Tax Department.