Holland & Hart

Tax Court Denies Coca-Cola's Request for Reconsideration in Pivotal Transfer Pricing Case

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The Tax Court has denied Coca-Cola's request to file an out of time motion for reconsideration of the Court's November 2020 adverse transfer pricing decision. Coca-Cola filed its motion 196 days after the Tax Court served its original opinion. Tax Court Rule 161 has a 30-day deadline to move for reconsideration. Judge Lauber was unmoved by Coca-Cola's motion to file an out of time motion for consideration and concluded that not only was Coca-Cola without a valid excuse for filing the motion after the deadline, but that the motion would have failed on the merits in any event.

Coca-Cola's case arose after the IRS challenged Coca-Cola's ongoing reliance on a 1996 closing agreement to settle an earlier transfer pricing dispute. The Tax Court held in favor of the IRS, concluding that Coca-Cola did not have a legitimate reliance interest in the closing agreement. In its motion for reconsideration, lodged on June 2, 2021, Coca-Cola—represented in part by Lawrence Tribe, a constitutional law scholar at Harvard Law School—argued that the IRS's continuous conduct approving the transfer pricing method set forth in the closing agreement in post-1996 years had created reliance interests protected by the Due Process Clause of the Fifth Amendment.

The Court was not persuaded. It concluded that several points weighed in favor of the government, noting in particular that:

- Coca-Cola's hiring of new counsel post-trial was not a compelling reason to allow the company to bypass the 30-day deadline, noting that if that were the standard, “a party could string litigation out indefinitely if its pockets were deep enough;”
- Coca-Cola's new counsel had in any event formulated its new arguments by January 6, 2021 (five months before the motion was filed), when the company issued a press release outlining the arguments made in the motion for reconsideration; and
- Coca-Cola had had the opportunity to raise the arguments advanced in the motion at any earlier point. Indeed, the Court viewed the arguments made in the motion as having been raised earlier “although clothed in slightly different garments.”

The Court concluded also that the motion was “futile” and would have failed on the merits. Judge Lauber explained that “[r]econsideration under Rule 161 serves the limited purpose of correcting substantial errors of fact and law.” In this instance, however, the Court had “addressed and rejected” earlier versions of Coca-Cola's arguments and its conclusion was unchanged: Coca-Cola “had no legitimate reliance interests” in believing that the IRS would adhere to the 1996 closing agreement indefinitely. According to the Court:

> “[T]he closing agreement made clear that the IRS could make transfer-pricing adjustments for post-1995 years regardless of what method petitioner chose to use. At bottom, petitioner's argument is that the IRS forfeited its right to make future adjustments without prior notice unless it made such adjustments immediately. Petitioner has supplied no authority, in law or logic, to support that proposition.”

The order denying the motion for leave dated October 26, 2021 in Coca-Cola Co. v. Commissioner, T.C. Docket 31183-15, can be found here. The Court also issued an order denying reconsideration of the transfer pricing decision by the entire Tax Court, which can be found here.

About The Team

Holland & Hart'stax controversy team represents corporations, partnerships, estates, and high-net worth individuals facing tax issues. We fight for clients at all phases of tax controversy, including defending IRS audits, advocating and resolving matters at IRS Appeals, negotiating litigation settlements, trying cases, and arguing case appeals.
