A Consistency Not So Foolish

Jeffery and Kim Greiner sued in the U.S. Court of Federal Claims seeking a federal income tax refund for 2008 and 2009 for $4,742,703. A threshold issue was whether the Greiners could establish that they had overpaid taxes in that amount, a prerequisite to their refund claim. Both parties cross-moved for summary judgment on this issue. The Greiners argued that their 2008/2009 tax returns had erroneously classified two cash payments as compensation income, which had been taxed at ordinary income rates, when that income should have been taxed at the preferential long-term capital gain rates. The refund they sought reflected the difference between what they paid in income tax versus what they should have paid.

In its defense, the Government argued that they were not entitled to treat the income as capital gains because they had not received permission from the IRS to change their method of accounting. The Government also contended that the change in accounting violates the common-law duty of consistency that the Greiners, as taxpayers, owe the Internal Revenue Service. Finally, the Government argued that the compensation did not qualify for long-term-capital-gain treatment.

The Court agreed with the Government, holding that the Greiners' claims for refund were based on an impermissible change in method of accounting under Internal Revenue Code Section 446(e) and Treasury Regulation Section 1.446-1(e). The Court explained that the purpose of these regulations was to avoid having taxpayers change methods of accounting years after they had filed their returns "when hindsight shows it might be financially advantageous to do so."

Read full decision here.