

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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| BRENDA BRADSHER & KENNETH |) | |
| MCCORMACK, |) | |
| |) | |
| Petitioner(s), |) | |
| |) | |
| v. |) | Docket No. 17773-13. |
| |) | |
| COMMISSIONER OF INTERNAL REVENUE, |) | |
| |) | |
| Respondent |) | |
| |) | |
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ORDER

This case is on the Court’s October 27, 2014 trial calendar for San Antonio, Texas. The petition that Ms. Bradsher and Mr. McCormack filed included as an attachment an IRS notice that is on a notice-of-deficiency form but plainly stated that it is a disallowance of a refund claim. This puzzled the Court because it had never before seen such a notice, and thinking this might not be a deficiency case at all it issued an order to the parties to show cause why the case shouldn’t be dismissed for lack of jurisdiction.

It turns out the parties are completely correct that there is no impediment to our jurisdiction in these circumstances. The key dates are:

Oct. 21, 2011 – petitioners file their 2010 Form 1040, U.S. Individual Income Tax Return, and pay the balance due. The amount shown on their return is presumably assessed.

Aug. 24, 2012 – petitioners file a claim for a refund for their 2010 tax year.

May 3, 2013 – respondent issues the notice both determining a deficiency and disallowing the claim for a refund.

July 30, 2013 – petitioners file their petition in this court.

This sequence is outside the usual, but issuing a combined notice is exactly what the Internal Revenue Manual tells its agents to do when a claim for a refund is pending during an audit that hasn't yet led to a notice of deficiency. *See* IRM 4.8.9.15.2. More importantly, as the parties patiently explained, IRC § 6512 contemplates treating the disallowed claim for a refund as a claim under our overpayment jurisdiction, so there is no problem with our jurisdiction. *See* IRC § 6512(b)(3)(C)(i). (There is even a somewhat similar case in which we've already explained why we have jurisdiction in these circumstance. *See Fisher v. Commissioner*, 96 TCM 339, 340 n.5 (2008).)

Having thus learned something new, there is nothing left for this division of the Court but to note that it is

ORDERED that the August 4, 2014 order to show cause is discharged.

**(Signed) Mark V. Holmes
Judge**

Dated: Washington, D.C.
October 23, 2014