UNITED STATES TAX COURT
WASHINGTON, DC 20217

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KUMAR RAJAGOPALAN & SUSAMMA KUMAR, ET AL.,	)	
Petitioner(s),	)	
v.	)	Docket No. 21394-11
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

This case is on the Court's June 8, 2015 trial calendar for Birmingham, Alabama. On May 20, 2015 respondent moved to amend his answer to assert a gross valuation-misstatement penalty under IRC § 6662(h). Tax Court Rule 41(a) provides that when more than 30 days have passed after an answer has been served, "a party may amend a pleading only by leave of Court or by written consent of the adverse party, and leave shall be give freely when justice so requires."

Whether a party may amend its answer lies within the sound discretion of the Court. *Quick v. Commissioner,* 110 T.C. 172, 178 (1998) (citations omitted). In determining the justice of allowing a proposed amendment, the Court must examine the particular circumstances of the case, and consider, among other factors (a) whether an excuse for the delay exists; and, (b) whether the opposing party would suffer unfair surprise, disadvantage, or prejudice. *Estate of Ravetti v. Commissioner,* 64 T.C.M. (CCH) 1476, 1477-78 (1992).

Respondent has a perfectly plausible excuse -- this is to a large extent a valuation case and it wasn't until the expert reports came in that respondent could do the math and decide he had a chance to assert a larger penalty for gross

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valuation misstatement. We also agree with him that petitioners would suffer no prejudice by the amendment -- there is no special defense to the gross valuation-misstatement penalty that petitioners cannot assert. (Petitioners argue that they are deprived of a procedural defense under § 6751(b)(1) by this late amendment. That section places an additional burden on the IRS before *assessment*, and the assessment of deficiencies for tax years before this Court don't happen until the decision in a case becomes final and unappealable. *See* §§ 6213, 6665(b) and 7485.

It is therefore

ORDERED that respondent's May 20, 2015 motion for leave to file amendment to answer is granted, and the Clerk shall file the amendment to the answer that was lodged with the motion.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
June 5, 2015