 CMS

UNITED STATES TAX COURT
WASHINGTON, DC 20217

TONY TAO-FU HSU,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 30921-15S
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

O R D E R

This case for the redetermination of a deficiency in before the Court on respondent's motion for summary judgment, filed May 24, 2016. By Order dated May 25, 2016, petitioner was directed to respond to the motion and advised of the consequences of his failure to do so. Petitioner has not responded to the motion, and, as he was advised, although we could grant it on that basis, see Rule 121(d),[1] we consider and resolve the motion on its merits, proceeding as though the facts relied upon by respondent in support of his motion are not in dispute. Those facts are easily summarized below.

In a notice of deficiency dated September 28, 2015 (notice), respondent determined a deficiency in petitioner's 2012 Federal income tax and imposed a section 6662(a) accuracy-related penalty.[2] The deficiency results from the disallowance of a portion of the mortgage interest deduction petitioner claimed on a Schedule A, Itemized Deductions, included with his 2012 Federal income tax return (return).

Petitioner was married throughout 2012. During that year he and his spouse resided at 2727 Indian Creek Road, Diamond Bar, California 91765 (residence).

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[1]Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov. Section references are to the Internal Revenue Code of 1986, as amended.

[2]The penalty is conceded in respondent's answer.

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Petitioner and his mother purchased the residence as joint tenants in 2004. At least part of the purchase price of the residence was paid with the proceeds of a loan well in excess of $1,000,000 secured by a mortgage on the residence (acquisition loan). In 2007, petitioner and his mother refinanced the acquisition loan and obtained a new loan secured by a mortgage on the residence, this time in the amount of $2,475,000 (mortgage loan).

During 2012 the residence was petitioner's and his spouse's principal residence. Petitioner's spouse held no ownership interest in the residence and was not legally obligated to make any of the payments due on the mortgage loan. Petitioner made all of the mortgage payments due on the mortgage loan during 2012, which included $105,343 of interest.

Petitioner's 2012 return shows his filing status as married filing separately. On the Schedule A included with the return he claimed a mortgage interest deduction of $45,253 attributable to the interest he paid on the mortgage loan. In the notice respondent disallowed all but $22,859 of that deduction.[5]

According to petitioner, section 163(h)(3)(B)(ii) and (C)(ii) allow the deduction for mortgage interest as claimed on his return because, as he states in his petition, those sections allow for a

> mortgage interest deduction on home acquisition debt and home equity debt up to $1,100,000. For married taxpayers filing separate, the limit is * * * [reduced] to $550,000. The obvious purpose of the reduction is to prevent married home owners who file separately from each claiming a deduction on $1.1 million of mortgage debt. I argue that the interest on the mortgage debt up to the limit of $1,100,000 shall be allowed in this case because: 1. Spouse'[s] name was never on the mortgage or property. 2. Spouse never made any mortgage payments. 3. Spouse never claimed mortgage interest deduction on her separate return. 4. I made all the mortgage payments for the primary residence. 5. The spirit of the law is to prevent over-claiming, not to * * * [disallow] deductions for qualified expenses.

[5]In his motion respondent now acknowledges that petitioner is entitled to a $22,934 home mortgage interest deduction for 2012.

Respondent disagrees with petitioner's analysis, and for the following reasons, so do we.

In general, section 163 allows a deduction for all interest paid or accrued within the taxable year on indebtedness. However, section 163(h) generally provides that an individual is not entitled to a deduction for personal interest. Personal interest does not include qualified residence interest. Sec. 163(h)(2)(D).

In general, a qualified residence is defined as a taxpayer's principal residence and one other home that is used as a residence. Sec. 163(h)(4)(A)(i). Qualified residence interest means any interest paid or accrued during a taxable year on acquisition indebtedness or home equity indebtedness with respect to the taxpayer's qualified residence. Sec. 163(h)(3)(A).

Section 163(h)(3)(B) provides:

> (i) IN GENERAL.-The term "acquisition indebtedness" means any indebtedness which-
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> (I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and
>
> (II) is secured by such residence.
>
> Such term also includes any indebtedness secured by such residence resulting from refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount for the indebtedness resulting from the refinancing does not exceed the amount of the refinanced indebtedness.
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> (ii) $1,000,000 LIMITATION.-The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

Section 163(h)(3)(C) provides:

> (i) IN GENERAL.-The term 'home equity indebtedness" means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate of such indebtedness does not exceed-
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> (I) the fair market value of such qualified residence, reduced by
>
> (II) the amount of acquisition indebtedness with respect to such residence.

> (ii) LIMITATION.-The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

From what has been submitted, we are satisfied that the residence meets the definition of a qualified residence; we are further satisfied that petitioner paid $105,343 of interest with respect to mortgage indebtedness secured by the residence. The question we must resolve is how much of that interest he is entitled to deduct.

Petitioner points out that during 2012 he made all of the mortgage payments with respect to the residence, and that his spouse claimed no home mortgage interest deduction for that year. Allegations contained in the petition show that petitioner obviously recognizes the $550,000 parenthetical indebtedness limitations of section 163(h)(3)(B)(ii) and (C)(ii) applicable to each spouse who files a separate return for the year. Nonetheless, he takes the position that he is entitled to deduct interest on $1,100,000 of mortgage indebtedness, not merely interest on $550,000 of mortgage indebtedness. As noted, according to petitioner, the "obvious purpose" and "spirit of the law" is to prevent married taxpayers who file separately from each using an indebtedness limitation of $1,100,000. We see the purpose of the statutory limitations quite differently.

In Bronstein v. Commissioner, 138 T.C. 382, 385-387 (2012), this Court dealt with a substantially identical argument made by a married taxpayer who, like petitioner, filed a separate return. The taxpayer in that case contended that a married couple filing separate returns are entitled to deduct interest on $1,100,000 of aggregate mortgage indebtedness across both their returns and are not limited to deducting interest on a maximum of $550,000 of indebtedness on any one return. In Bronstein, 138 T.C. at 387, we rejected the taxpayer's argument and explained as follows:

> We believe section 163(h)(3)(B)(ii) clearly states that a married individual filing a separate return is limited to a deduction for interest paid on $500,000 of home acquisition indebtedness. Similarly, we believe section 163(h)(3)(C)(ii) clearly states that a married individual filing a separate return is limited to a deduction for interest paid on $50,000 of home equity indebtedness.
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> * * * [The taxpayer] has not offered any unequivocal evidence of legislative purpose which would allow us to override the

> plain meaning of section 163(h)(3)(B)(ii) and (C)(ii). As a result, we agree with * * * [the Commissioner that the taxpayer] is not entitled to a deduction for interest paid on the entire $1 million of acquisition indebtedness incurred in purchasing the property. Rather, * * * [the taxpayer] is entitled to deduct interest paid on only $550,000 of the mortgage indebtedness. [Fn. ref. omitted.]

Summary judgment may be granted where the moving party shows, through the pleadings and other materials, that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994); FPL Grp., Inc. & Subs. v. Commissioner, 116 T.C. 73, 74 (2001). None of the facts recited above are in dispute. Applying the applicable law to those facts shows that respondent is entitled to a decision as a matter of law with respect to the amount of interest petitioner is entitled to deduct for 2012.

Premises considered, it is

ORDERED that respondent's motion is granted, and petitioner is entitled to deduct interest paid on only $550,000 of the mortgage indebtedness for 2012. Because a portion of the deficiency as determined in the notice has been conceded by respondent, it is further

ORDERED that on or before August 31, 2016, respondent shall submit to the Court, with proper service on petitioner, respondent's computation as to the amount of the deficiency to be shown in the decision. See Rule 155.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
July 28, 2016