

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

CHARLES SOECHTING & ELIZABETH)
SOECHTING,)
)
Petitioners,)
)
v.) Docket No. 21729-15
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER

This case for the redeterminations of deficiencies is before the Court on petitioners’ motion for partial summary judgment, filed December 15, 2015. A hearing was conducted on petitioners’ motion on September 14, 2016, in Houston, Texas. Counsel for the parties appeared and were heard.

In a notice of deficiency dated June 16, 2015 (notice), respondent determined deficiencies in, and imposed penalties with respect to petitioners’ 2009, 2010, and 2011 Federal income taxes. Errors in the notice pointed out by petitioners that form the basis for the motion here under consideration have been acknowledged by respondent.

According to petitioners, the errors invalidate the notice because: (1) the notice has not been issued in accordance with certain provisions of the Administrative Procedure Act (APA), and/or (2) the notice does not comply with section 7522.¹ Respondent disagrees, but recognizes that the errors might have an effect on which party bears the burden of proof with respect to issues raised by the adjustments.

Petitioners’ position that the notice is invalid, which has jurisdictional implications, is rejected. Their reliance upon the APA is misplaced for the reasons set forth in Ax v. Commissioner, 146 T.C. ____ (April 11, 2016); and their reliance on section 7522 is misplaced as that section expressly provides that the failure to

¹Section references are to the Internal Revenue Code of 1986, as amended.

“describe the basis for, and identify the amount of tax due” as petitioners claim the notice fails to do, does not “invalidate such notice.” See Cadwell v. Commissioner, 136 T.C. 38, 49 (2011). The validity of the notice, of course, says little about the validity of the adjustments it contains.

To the extent that petitioners’ motion suggests that the Court is without jurisdiction in this matter because the notice is invalid, and to the extent that petitioners’ motion requests entry of decision in petitioners’ favor because of the errors in the notice, the motion will be denied. It remains to be seen which party will bear the burden of proof on unresolved issues as a result of those errors.

Premises considered, it is

ORDERED that petitioners’ motion is denied.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
October 21, 2016