

UNITED STATES TAX COURT
WASHINGTON, DC 20217

HERBERT HEINTZ & BARBARA HEINTZ,)
)
 Petitioners,)
)
 v.) Docket No. 2731-17 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

ORDER

The petition in this case was filed on February 3, 2017. Petitioners seek review of a purported notice of determination concerning collection action dated January 17, 2017, allegedly issued to them with respect to their taxable years 2009, 2010, 2011, 2012, and 2013.

On March 13, 2017, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground no notice of determination under I.R.C. section 6320 or 6330 or other notice of determination was issued to petitioners for taxable years 2009, 2010, 2011, 2012, and 2013 that would permit petitioners to invoke the Court’s jurisdiction. On March 20, 2017, petitioners filed a Joint Response to respondent’s motion to dismiss. In their Response petitioners assert, inter alia:

Respondent seeks to dismiss the PETITION of the Appellants on the grounds that this Court lacks jurisdiction because Respondent has not issued a "Notice of Deficiency" (90 day letter) , nor a "Determination" for the years of 2009, 2010, 2011, 2012 and 2013.

This conclusion is unwarranted. Rule 13 of this Court does not require the Notice of Deficiency in matters of Declaratory Judgment or " abatement " of interest or the imposition of liens and executions in order to appeal to this Court.

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This appeal involves all of the elements of a declaratory judgment. A declaratory action seeks a ruling by the Court on of legal uncertainties. This Court deals with substance over form and it is unnecessary to specifically title a pleading a "Declaratory Judgment". There is no magic in the nomenclature of a pleading and it should be construed to serve the best interests of the pleader, with technicalities of procedure set aside. In addition, the Petition in this case asks this Court to look at the imposition of liens and executions upon the real property of the Petitioners and upon the refusal of the right to appeal the rejection of amended tax returns and later renegeing of IRS credits which implied an acceptance of the amended returns.

On March 20, 2017, petitioners filed a First Supplement to their response.

In pertinent part, Tax Court Rule 211 provides as follows:

**RULE 211. COMMENCEMENT OF ACTION FOR
DECLARATORY JUDGMENT**

(a) Commencement of Action: An action for declaratory judgment shall be commenced by filing a petition with the Court. * * *

(b) Content of Petition: Every petition shall be entitled “Petition for Declaratory Judgment (Retirement Plan)”, “Petition for Declaratory Judgment (Gift Valuation)”, “Petition for Declaratory Judgment (Governmental Obligation)”, “Petition for Declaratory Judgment (Estate Tax Installment Payment)”, or “Petition for Declaratory Judgment (Exempt Organization)”, as the case may be. Each such petition shall contain the allegations described in paragraph (c), (d), (e), (f), or (g) of this Rule.

Upon due consideration and for cause, it is

ORDERED that, on or before April 11, 2017, petitioners shall file a Second Supplement to their response. In that Second Supplement petitioners shall set forth and discuss fully petitioners’ position as to (1) whether the purported declaratory judgment action petitioners seek is described in Tax Court Rule 211(b), and (2)

all applicable allegations, if any, described in paragraphs (c), (d), (e), or (f) of Rule 211 pertaining to such declaratory judgment action.

**(Signed) L. Paige Marvel
Chief Judge**

Dated: Washington, D.C.
March 21, 2017