

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CLC

KEVIN DEWITT SKAGGS,)
)
Petitioner,)
)
v.) Docket No. 15944-16S.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

This is a deficiency proceeding brought under section 6213.¹ When filing his petition, Mr. Skaggs used T.C. Form 2, appended to our Rules of Practice & Procedure, and checked the box indicating that he wanted his case to be conducted under small tax case procedures. Today, we will remove the small tax case designation from this case.

Section 7463 sets forth procedures for disputes involving \$50,000 or less. Generally, Tax Court cases are conducted under section 7453, which means that the proceedings are governed by our normative Rules of Practice & Procedure and the Federal Rules of Evidence. But if a taxpayer opts into section 7463, the “small tax case” procedures of Rules 170-174 apply. These small tax cases (or, colloquially, “S” cases) are “conducted as informally as possible consistent with orderly procedure, and any evidence deemed by the Court to have probative value shall be admissible.” Rule 174(b).

This informality comes at a cost for the parties. Small tax cases are not appealable. Section 7463(b) provides that a decision in an S case “shall not be reviewed in any other court”. Neither the taxpayer nor the IRS can appeal a decision in an S case.

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

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But there is also a cost for the Court and the public, because that same provision also says that a decision in a small tax case “shall not be treated as a precedent for any other case.” Sec. 7463(b). This effectively prevents the Court or parties in future cases from relying on opinions in S cases, which we designate as “Summary Opinions”.

It is perhaps for this reason that the Court has a gatekeeper role to play. Although opting into the small tax case procedure is “at the option of the taxpayer” it must also be “concurring in by the Tax Court.” Sec. 7463(a). Under our rules, if a taxpayer makes a small tax case election and the Court takes no further action with respect to that election, then “the Court shall be deemed to have concurred” with the election. Rule 171(d). Conversely, “[t]he Court, on its own motion or on the motion of a party to the case, may, at any time before the trial commences, issue an order directing that the small tax case designation be removed and that the proceedings not be conducted as a small tax case.” *Id.* In doing so, we consider whether “the orderly conduct of the work of the Court or the administration of the tax laws would be better served by a regular trial of the case. H.R. Rep. No. 95-1800, pt. 4 at 277 (1978). Congress specifically noted in its Conference Report to the 1978 amendments to section 7463 that:

removal of the case from the small case category may be appropriate where a decision in the case will provide a precedent for the disposition of a substantial number of other cases or where an appellate court decision is needed on a significant issue.

Id. at 278.

On its own motion, the Court will exercise its gatekeeper role in this case and remove the small tax case designation. Pending before the Court is a motion for summary judgment, and that motion presents an issue of first impression for our Court. The resolution of that issue will likely be dispositive of this case. Both the Court and the broader public will benefit by our removal of the S designation, because the opinion in this case may be relied upon as precedent.

And Mr. Skaggs will not risk the increased costs and complexity of a trial as a result of our removal of the small tax case designation. Because the outcome of the pending summary judgment motion will likely be dispositive of this case, there will be no trial. As a result, removing the S designation will not result in a more formal trial or the costs and complexity that might accompany a trial held under our normative procedures.

For the foregoing reasons, it is

ORDERED that the caption of this case is amended by removing the letter “S” from the docket number. It is further

ORDERED that the Clerk of the Court shall remove the letter “S” from the docket record and all other records of her office and process this case according to the normative Tax Court Rules of Practice and Procedure.

**(Signed) Ronald L. Buch
Judge**

Dated: Washington, D.C.
April 25, 2017