

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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|-----------------------------------|---|----------------------|
| AZITA E. LARIJANI, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Docket Nos. 4902-17, |
| |) | 4966-17. |
| COMMISSIONER OF INTERNAL REVENUE, |) | |
| |) | |
| Respondent. |) | |

ORDER

Pending in the deficiency case for 2014 at docket No. 4966-17 is respondent's Motion To Close on Ground of Duplication, as supplemented. As discussed more fully below, respondent's motion, as supplemented, raises the issues of: (1) whether or not the Court has jurisdiction at docket No. 4966-17 under the January 3, 2017, deficiency notice issued to petitioner for 2014 upon which that case is based; and (2) whether or not the Court has jurisdiction as to so much of the case at docket No. 4902-17 relating to taxable year 2014 under the February 14, 2017, deficiency notice issued to petitioner for 2009 through 2014 upon which that case is based.

Background

On January 3, 2017, a notice of deficiency was mailed to petitioner for 2014. That January 3, 2017, deficiency notice determined against petitioner for that year the following deficiency and penalties/additions to tax:

| <u>Year</u> | <u>Deficiency</u> | <u>Penalty/Addition to Tax</u> | |
|-------------|-------------------|--------------------------------|---------------------|
| | | <u>Sec. 6651(a)(1)</u> | <u>Sec. 6662(a)</u> |
| 2014 | \$22,428 | \$2,243 | \$4,486 |

On February 14, 2017, a notice of deficiency notice was mailed to petitioner for 2009, 2010, 2011, 2012, 2013, and 2014. Insofar as relating to taxable year

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2014, that February 14, 2017, deficiency notice determined against petitioner for that year the following deficiency and penalties/additions to tax:

| <u>Year</u> | <u>Deficiency</u> | <u>Penalty/Addition to Tax</u> | |
|-------------|-------------------|--------------------------------|---------------------|
| | | <u>Sec. 6651(a)(1)</u> | <u>Sec. 6662(a)</u> |
| 2014 | \$79,789 | \$7,978 | \$15,957 |

On February 28, 2017, petitioner filed a timely petition, at docket No. 4902-17, challenging the notice of deficiency dated February 14, 2017, issued to petitioner for 2009 through 2014.

On March 1, 2017, petitioner filed a timely petition, at docket No. 4966-17, challenging the notice of deficiency dated January 3, 2017, issued to petitioner for 2014.

On April 26, 2017, respondent filed a Motion To Close on Ground of Duplication, at docket No. 4966-17, seeking to close that case as duplicative of the case at docket No. 4902-17. On May 18, 2017, respondent filed a First Supplement to his motion to close. In his motion to close, as supplemented, respondent now asserts that: (1) respondent's motion to close on ground of duplication should be denied; and (2) because the January 3, 2017, deficiency notice issued to petitioner for 2014 is invalid, the Court instead should dismiss for lack of jurisdiction the case at docket No. 4966-17.

By Order dated May 22, 2017, at docket Nos. 4902-17 and 4966-17, the Court directed petitioner and respondent each to file a Response to that order setting forth and discussing fully that party's position as to: (1) (a) whether or not the January 3, 2017, deficiency notice issued to petitioner for 2014 is valid, and (b) whether the Court has jurisdiction in the case at docket No. 4966-17; and (2)(a) insofar as relating to 2014, whether or not the February 14, 2017, deficiency notice issued to petitioner is valid, and (b) whether the Court has jurisdiction as to so much of the case at docket No. 4902-17 relating to taxable year 2014. On June 12, 2017, respondent filed a Response to Order Dated 05/22/2017. On June 13, 2017, petitioner filed a Response to Order Dated 05/22/2017.

Discussion

Both a valid notice of deficiency and a timely petition are essential to the Tax Court's jurisdiction in a deficiency case, and the Court must dismiss any case

in which one or the other is not present. Monge v. Commissioner, 93 T.C. 22, 27, 1989).

Section 6212(c)(1)¹ generally provides that if the Commissioner has mailed to the taxpayer a notice of deficiency under section 6212(a), and the taxpayer files a timely Tax Court petition, the Commissioner shall have no further right to determine any additional deficiency of income tax for the same taxable year, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of increased deficiencies). See Stamm International Corp. v. Commissioner, 84 T.C. 248, 252 (1985); Skaneateles Paper Co. v. Commissioner, 29 B.T.A. 150, 155 (1933) (explaining section 274(f) of the Revenue Act of 1926 (the predecessor to section 6212(c)(1)).² However, a second deficiency notice is not invalid under section 6212(c)(1) where the taxpayer has declined or failed to file a timely Tax Court petition as to the first deficiency notice. See Goff v. Commissioner, 18 B.T.A. 283, 288 (1929).

In Goff, 18 B.T.A. at 288, the Board of Tax Appeals (the predecessor to the Tax Court) elaborated and reasoned as follows in holding valid the second deficiency notice:

It is clear from the sections of law just quoted that Congress intended thereby to require the Commissioner, where he had issued a notice of deficiency and the taxpayer had filed a petition with this Board, to assert any additional taxes that he might determine to be due

¹Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended and in effect for the taxable period in issue.

²In Skaneateles Paper Co., 29 B.T.A. 155, the Board of Tax Appeals (the predecessor to the Tax Court) explained section 274(a) of the Revenue Act of 1926 as follows:

Under the Revenue Act of 1924, after having sent the taxpayer a deficiency notice, the Commissioner nevertheless had the right, without revoking the first notice, to send a second notice covering the same taxable year. This right was taken away by section 274(f) of the Revenue Act of 1926 if the taxpayer appealed to the Board from the first deficiency notice, and after the enactment of the latter act, the Commissioner in such case was prohibited from determining any additional deficiency, except that he was authorized to assert a claim for increased deficiency at or prior to the hearing or rehearing before the Board.
[Citation references omitted; emphasis in original.]

from the taxpayer by a claim or answer in the nature of a cross petition and not by a separate proceeding. This intent is also evidenced by the Report of the Ways and Means Committee of the House of Representatives. It may be safely assumed that the object of Congress was to avoid a multiplicity of proceedings for the same taxable year. But we find no reason for holding that the Commissioner may not issue a second notice of deficiency for the same taxable year where the taxpayer has failed or declined to appeal from the first notice. The Commissioner cannot institute a proceeding before this Board if the taxpayer fails or declines to institute such proceeding from the first deficiency notice and in such a case obviously he cannot assert his claim for additional taxes 'at or before the hearing or rehearing.'

As indicated above, in their respective Responses to Order Dated 05/22/2017, the parties disagree as to whether the first January 3, 2017, deficiency notice issued to petitioner for 2014 is valid. According to respondent, the first January 3, 2017, deficiency notice is invalid because: (1) based upon the legislative history of section 274(f) of the Revenue Act of 1926 (the predecessor to section 6212(c)(1)), it seems that once a timely petition is filed as to a deficiency notice, then no further deficiency notice for that same year could be valid; and (2) extending to the instant cases the reasoning of Goff v. Commissioner, 18 B.T.A. 283, 289 (1929); Gmelin v. Commissioner, T.C. Memo. 1988-389, aff'd without published opinion 891 F.2d 280 (3d Cir. 1989); and Jones v. United States, 889 F.2d 1448, 1451 (5th Cir. 1989), (a) the IRS is not precluded from issuing a second deficiency notice before the expiration of the 90-day period for the initial first deficiency notice, (b) therefore, both the first January 3, 2017, deficiency notice for 2014 and the second February 14, 2017, deficiency notice, issued for 2014, were valid when issued, and (c) however, once the petition was filed at docket No. 4902-17 on February 28, 2017, challenging the second February 14, 2017, deficiency notice, it invalidated in its entirety the duplicative first January 3, 2017, deficiency notice issued to petitioner for 2014.

Petitioner, on the other hand, disagrees with respondent's above position. Petitioner asserts that: (1) the first January 3, 2017, deficiency notice issued to petitioner for 2014 is valid and the Court has jurisdiction as to the case at docket No. 4966-17, since a timely petition as to that deficiency notice commencing docket No. 4966-17 was filed on March 1, 2017; (2) insofar as relating to 2014, the second February 14, 2017 deficiency notice is invalid under section 6212(c)(1),

and the Court lacks jurisdiction as to so much of docket No. 4902-17 relating to 2014. We agree with petitioner.

Unlike the instant cases at docket Nos. 4902-17 and 4966-17, an examination of Goff, Gmelin, and Jones (which respondent cites and relies heavily upon) discloses that no timely Tax Court petition was ever filed by the taxpayers in Goff, Gmelin, and Jones as to the first deficiency notice issued to those taxpayers. See Skaneateles Paper Co. v. Commissioner, 29 B.T.A. 150, 155 (1933). Contrary to respondent's argument, the Court concludes that: (1) the first January 3, 2017, deficiency notice issued to petitioner for 2014 is valid; (2) since a timely petition was filed at docket No. 4966-17 on March 1, 2017, to review that January 3, 2017, deficiency notice, the Court has jurisdiction at docket No. 4966-17; and (3) insofar as relating to 2014, the second February 14, 2017, deficiency notice issued to petitioner is invalid under section 6212(c)(1). Accordingly, the Court will (1) deny respondent's motion to close, as supplemented, filed at docket No. 4966-17, and (2) on our own motion, dismiss so much of docket No. 4002-17 relating to taxable year 2014 on the ground the second February 14, 2017, deficiency notice issued to petitioner, insofar as relates to 2014, is invalid under section 6212(c)(1).

Premises considered, it is

ORDERED that respondent's Motion To Close on Ground of Duplication, as supplemented, at docket No. 4966-17, is denied. It is further

ORDERED that, on the Court's own motion, so much of the case at docket No. 4902-17 relating to taxable year 2014, is dismissed for lack of jurisdiction on the ground the second February 14, 2017, deficiency notice issued to petitioner, insofar as relates to 2014, is invalid under section 6212(c)(1).

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

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