

UNITED STATES TAX COURT
WASHINGTON, DC 20217

AMANDA N. VU,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 21661-14S.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Respondent.	)	

O R D E R

This case is before the Court on petitioner's Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161, Motion to Vacate or Revise Pursuant to Rule 162, and Motion to Remove Small Tax Case Designation, each filed December 1, 2016. For the reasons stated below, we will deny petitioner's motions.

Background

Petitioner filed her petition (on T.C. Form 2) commencing this case on September 12, 2014, having been received by the Court on the same day in an envelope bearing a U.S. Postal Service postmark of September 8, 2014. In her petition, petitioner alleged disagreement with a notice of determination that she claimed was issued by respondent on June 12, 2014. She did not attach to her petition this referenced notice of determination; she attached respondent's "Innocent Spouse Relief Lead Sheet" dated June 4, 2014, with respect to the 2011 joint Federal income tax return for her and her then husband, and designated "Workpaper #615". She also checked the box on her petition indicating that she wanted her case to be conducted under small tax case procedures.

On January 27, 2015, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground that the petition was not timely filed within the periods prescribed by section 6015(e)(1)(A). Section 6015(e)(1)(A) provides that, in order for the Court to have jurisdiction to review a notice of final determination regarding a request for relief from joint and several liability (innocent spouse

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relief), the petition must be filed (1) within 90 days of the Commissioner's mailing of a notice of his final determination regarding innocent spouse relief to the taxpayer, or (2) if the Commissioner has not yet mailed such a notice, at any point after six months has transpired since the taxpayer's request for innocent spouse relief was "filed" or "made" with the Commissioner.

In support of his motion, respondent attached a copy of his certified mailing list as evidence of the fact that a notice of final determination, which denied petitioner innocent spouse relief for the 2011 taxable year, was mailed to her by certified mail on October 9, 2014, after the petition was filed. Petitioner did not respond to respondent's motion despite an order of this Court directing her to do so.

Pursuant to notice, respondent's motion was called for hearing from the calendar for the Trial Session of the Court at Albuquerque, New Mexico, on June 1, 2015. Petitioner and counsel for respondent appeared and were heard regarding respondent's motion.

Admitted into evidence at the hearing was a copy of petitioner's Form 8857, Request for Innocent Spouse Relief, signed and dated by petitioner February 28, 2014, and stamped received by respondent on March 24, 2014. Petitioner testified at the hearing that a friend had assisted her with completing the form and had mailed it on her behalf, but that she did not have a record of when it was actually mailed. She further testified that she filed her petition with the Court after having waited six months from the date she signed her request for innocent spouse relief, February 28, 2014, and not "see[ing] any mail from the IRS about their determination". At the hearing, she presented no evidence that any relevant action occurred on June 12, 2014, and admitted having received respondent's October 9, 2014, notice of final determination but having not filed anything further with the Court in response to that determination.

We determined in T.C. Summary Opinion 2016-75, filed November 8, 2016, that we could only exercise jurisdiction over petitioner's petition if it was filed "at any time after the earlier of" October 9, 2014, or September 25, 2014, see sec. 6015(e)(1)(A)(I), and "not later than" January 7, 2015, see sec. 6016(e)(1)(A)(ii). Because the petition was filed with the Court on September 12, 2014, we held it did not satisfy this requirement and we thus lacked jurisdiction over it. Accordingly, by Order entered November 10, 2016, we granted respondent's motion to dismiss and dismissed petitioner's case for lack of jurisdiction.

On November 29, 2016, Carlton M. Smith and T. Keith Fogg, being duly admitted to practice before this Court, entered an appearance as counsel for petitioner in this case in accordance with Rule 24(a)(3). Shortly thereafter, on December 1, 2016, they timely filed on petitioner's behalf a motion for reconsideration, a motion to vacate, and a motion to remove the small tax case designation. On January 26, 2017, respondent filed Notices of Objection to petitioner's motion for reconsideration and motion to vacate, and a Response to petitioner's motion to remove the small tax case designation.[1]

Discussion

A. Petitioner's Motion for Reconsideration and Motion to Vacate or Revise

The decision to grant a motion for reconsideration of findings or an opinion under Rule 161, as well as a motion to vacate or revise a decision under Rule 162, lies within the discretion of the Court. Estate of Quick v. Commissioner, 110 T.C. 440, 441 (1998) (motion to reconsider); Kun v. Commissioner, T.C. Memo. 2004-273 (motion to vacate or revise). The Court generally will grant a motion for reconsideration only to correct substantial errors of fact or law or to allow the introduction of newly discovered evidence that was not available to the moving party in the prior proceeding. Estate of Quick v. Commissioner, 110 T.C. at 441. A motion for reconsideration is not the appropriate vehicle for rehashing previously rejected legal arguments or advancing new legal theories to reach the end result desired by the movant. Id. at 441-442. Similarly, a motion to vacate generally will not be granted absent a showing of unusual circumstances or substantial error, e.g., mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, or other reason justifying relief. See, e.g., Fed. R. Civ. P. 60(b); Brannon's of Shawnee, Inc. v. Commissioner, 69 T.C. 999 (1979).

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[1]After respondent's filings in response to petitioner's motions, the Court received and filed an Affidavit of Amanda N. Vu in Support of Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161. The affidavit outlines in greater detail the time line of events relating to petitioner's receipt of the June 4, 2014, "Innocent Spouse Relief Lead Sheet", as well as subsequent consideration of her request for innocent spouse relief by the Internal Revenue Service Office of Appeals.

In her motions for reconsideration and to vacate, petitioner raises a new argument. Petitioner contends that the periods prescribed by section 6015(e)(1)(A) for filing a petition for review of a notice of final determination regarding innocent spouse relief are not jurisdictional but merely waivable claim-processing rules. Therefore, petitioner contends that her failure to file her petition within those periods does not deprive the Court of jurisdiction over her case and respondent's motion to dismiss should be denied. In support of her position, petitioner cites to Supreme Court jurisprudence on jurisdictional issues from around the time of and since this Court's opinion in Pollock v. Commissioner, 132 T.C. 21 (2009), in which we held that section 6015(e)(1)(A) is jurisdictional. Petitioner asserts (in her motion to remove the small tax case designation) that because of this recent Supreme Court jurisprudence, Pollock must be overruled.

Petitioner's arguments are identical to arguments that the U.S. Court of Appeals for the Second Circuit and the U.S. Court of Appeals for the Third Circuit recently rejected in Matuszak v. Commissioner, 2017 WL 2854346 (2d Cir. July 5, 2017), aff'g orders dated December 29, 2015, and July 29, 2016, in Docket No. 471-15, and Rubel v. Commissioner, 856 F.3d 301 (3rd Cir. 2017), aff'g order dated July 11, 2016, in Docket No. 9183-16, respectively.[2] These Courts of Appeals, consistent with the recent Supreme Court jurisprudence, held that the text and context of section 6015(e)(1)(A) confirms that the periods prescribed therein are jurisdictional.

Furthermore, several other Courts of Appeals, including the Court of Appeals for the Tenth Circuit (to which an appeal of this case would lie if it was appealable, see infra pp. 5-6), have construed section 6330(d)(1) (which uses language similar to section 6015(e)(1)(A) in the context of filing a Tax Court petition commencing a collection due process proceeding) as jurisdictional. See, e.g., Gray v. Commissioner, 723 F.3d 790, 793 (7th Cir. 2013), aff'g 138 T.C. 295, 299 (2012); Boyd v. Commissioner, 451 F.3d 8 (1st Cir. 2006), aff'g 124 T.C. 296, 303 (2005); see also Kaplan v. Commissioner, 552 F. App'x 77, 78 (2d Cir. 2014); Trivedi v. Commissioner, 525 F. App'x 587, 588 (9th Cir. 2013); Springer v. Commissioner, 416 F. App'x 681, 683 n.1 (10th Cir. 2011).

[2]Counsel of record for the taxpayers in Matuszak and Rubel are the same counsel of record for petitioner.

Accordingly, we reject petitioner's contentions. We will continue to apply our existing jurisprudence which, as indicated supra p. 4, has been reaffirmed by several Courts of Appeals and, consistent with that jurisprudence, conclude that we properly dismissed petitioner's petition because the petition was untimely. Because petitioner has not shown any unusual circumstances or substantial error that warrants granting her motions for reconsideration and to vacate, we will deny the motions.

B. Petitioner's Motion to Remove Small Tax Case Designation

Section 7463 sets forth the procedures for small tax cases, i.e., disputes involving $50,000 or less. See also Rules 170-174. If a petitioner elects into section 7463, his or her case (designated by the Court as an "S" case) will be "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). However, in exchange for this informality, a decision in a small tax case is not appealable and has no precedential value. Sec. 7463(b).

A petitioner's election to have his or her case conducted under the small tax case procedures is not absolute or permanent. The election must be "concurred in by the Tax Court". See sec. 7463(a) and (f). Under our rules, if the petitioner 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 therein". 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".[3] Id. In deciding whether to issue such an order, we are to consider "whether the orderly conduct of the work of the Court or the

[3]In addition, pursuant to sec. 7463(d), at any time before a decision entered by the Court in a small tax case becomes final, "the taxpayer or the Secretary may request that further proceedings under * * * sec. [7463] in such a case be discontinued". The Tax Court, or the division thereof hearing such case, may then discontinue further proceedings in such case under sec. 7463 "if it finds that (1) there are reasonable grounds for believing that the amount of the deficiency placed in dispute, or the amount of an overpayment, exceeds * * * [$50,000], and (2) the amount of such excess is large enough to justify granting such request". Sec. 7463(d). There are no reasonable grounds for believing that the amount of the underlying liability in this case exceeds $50,000.

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). To that end, we have recognized that it is appropriate to use the regular tax case procedures, rather than the small tax case procedures, where "a decision in the case will provide a precedent for the disposition of a substantial number of other cases or whether an appellate court decision is needed on a significant issue". Page v. Commissioner, 86 T.C. 1, 13 (1986) (quoting H.R. Rep. No. 95-1800, pt. 4 at 278); see also Dressler v. Commissioner, 56 T.C. 210, 212 (1971).

Petitioner contends that the small tax case designation is no longer appropriate in this case because the issue presented here--whether section 6015(e)(1)(A) is jurisdictional or is merely a waivable claim-processing rule--is an important issue of law that may affect many other taxpayers litigating in this Court, and there is no precedent on this issue in the Court of Appeals for the Tenth Circuit. As discussed supra p. 4, the issue, though, is not one of first impression for our Court and our existing jurisprudence on the issue has been reaffirmed by two recent appellate court decisions, albeit not from the Court of Appeals for the Tenth Circuit. As further discussed supra id., the Court of Appeals for the Tenth Circuit, as well as several other Courts of Appeals, however, have interpreted the substantially similar section 6330(d)(1) as jurisdictional. Although there was no actual trial in this case, petitioner's motion to remove the small tax case designation was not filed until some three weeks after the summary opinion was issued and the order of dismissal for lack of jurisdiction was entered, which, in the Court's view, violates the spirit of the Court's small tax case rules. Accordingly, we will deny petitioner's motion to remove the small tax case designation.

We have considered petitioner's remaining contentions in her motions and, to the extent they are not addressed by this Order, we find them to be irrelevant or without merit.

Upon due consideration, it is hereby

ORDERED that petitioner's Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161, filed December 1, 2016, is denied. It is further

ORDERED that petitioner's Motion to Vacate or Revise Pursuant to Rule 162, filed December 1, 2016, is denied. It is further

ORDERED that petitioner's Motion to Remove Small Tax Case Designation, filed December 1, 2016, is denied.

(Signed) Tamara W. Ashford
Judge

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