

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

MARK Y. LIU AND GINGER Y. BIAN,	)	
DECEASED, MARK Y. LIU, SURVIVING	)	
SPOUSE,	)	
	)	<b>CZ</b>
Petitioners,	)	
	)	
v.	)	Docket No. 8667-16
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER**

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioners and to respondent a copy of the pages of the transcript of the trial in the above case before Chief Special Trial Judge Lewis R. Carluzzo at Houston, Texas, on September 21, 2017, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, an appropriate Order will be issued denying petitioners' (1) motion for summary judgment, filed December 27, 2016, (2) motion to dismiss for lack of jurisdiction, filed July 10, 2017, (3) motion to object to judge's Orders, filed July 17, 2017, and (4) motion to disqualify special trial judge and to rehear from chief judge, filed July 28, 2017.

**(Signed) Lewis R. Carluzzo**  
**Special Trial Judge**

Dated: Washington, D.C.  
October 16, 2017

**SERVED Oct 17 2017**

1 BENCH OPINION BY:  
2 CHIEF SPECIAL TRIAL JUDGE LEWIS R. CARLUZZO  
3 SEPTEMBER 21, 2017  
4 CASE NAME: MARK Y. LIU AND GINGER Y. BIAN, DECEASED,  
5 MARK Y. LIU, SURVIVING SPOUSE  
6 DOCKET NUMBER: 8667-16

7 THE COURT: The Court has decided to render  
8 oral findings of fact and opinion in this case and  
9 the following represents the Court's oral findings of  
10 fact and opinion (bench opinion). Section references  
11 made in this bench opinion are to the Internal  
12 Revenue Code of 1986, as amended, in effect for the  
13 relevant period, and Rule references are to the Tax  
14 Court Rules of Practice and Procedure.

15 This bench opinion is made pursuant to the  
16 authority granted by section 7459(b) and Rule 152.  
17 The order to be entered in this case resulting from  
18 this bench opinion shall not be treated as precedent  
19 for any other case, and except as provided in Rule  
20 152(c), this bench opinion shall not be cited as  
21 authority.

22 This case for the redetermination of a  
23 deficiency is before the Court on the following  
24 motions, all submitted by Petitioners, but not here  
25 listed in chronological order: (1) motion to dismiss



1 for lack of jurisdiction, filed July 10, 2017; (2)  
2 motion for summary judgment, filed December 27, 2016;  
3 (3) motion to object to judges' orders, filed July  
4 17, 2017; and (4) motion to disqualify special trial  
5 judge, filed July 28, 2017. A fair reading of the  
6 last two motions suggests that they should be  
7 considered as Petitioners' motions for me to recuse  
8 myself from this case. For the sake of simplicity,  
9 I'll sometimes refer to those two motions as  
10 Petitioners' recusal motions. Respondent's  
11 objections to Petitioners' summary judgment motion  
12 are embodied in his response, filed January 18, 2007.

13 By Order dated July 3, 2017, the case was  
14 assigned to me for disposition. See sec 7443A(b)(7);  
15 Rule 180. Various order set the above-listed motions  
16 for hearing on September 18, 2017, in Houston, Texas,  
17 which is Petitioners' requested place of trial.

18 So much of Petitioners' motion to continue,  
19 filed September 7, 2017, seeking to postpone the  
20 hearing was denied by Order dated September 8, 2017,  
21 and the motions were heard as scheduled. There was  
22 no appearance by or on behalf of Petitioners. Ashley  
23 V. Targac appeared on behalf of Respondent and argued  
24 in opposition to the motions.

25 We'll address Petitioners' recusal motions



1 first. According to Petitioners, I should recuse  
2 myself from this proceeding because of my involvement  
3 in a prior Tax Court proceeding, that is Liu v.  
4 Commissioner, docket number 16841-14 (prior  
5 proceeding). The prior proceeding also was a  
6 proceeding for the redetermination of a deficiency.  
7 It was resolved by stipulated decision.

8 Believing themselves ill-advised with  
9 respect to the resolution of the prior proceeding,  
10 Petitioners moved to vacate the stipulated decision  
11 upon the ground that the decision represented a fraud  
12 on the Court.

13 Petitioners' motion to vacate the decision  
14 in the previous proceeding was heard in Houston,  
15 Texas, on May 20, 2016. A bench opinion was rendered  
16 on the same date, and by Order dated June 2, 2016, I  
17 denied Petitioners' motion. Petitioners appealed my  
18 ruling, which was affirmed by the U.S. Court of  
19 Appeals for the Fifth Circuit by mandate dated July  
20 17, 2017. See Liu v. Commissioner, 689 Fed Appx. 264  
21 (5th cir. 2017).

22 Apparently unhappy with the above-mentioned  
23 turn of events, Petitioners lodged a misconduct  
24 complaint against me as a result of my ruling in the  
25 prior proceeding. That misconduct complaint is still

1 pending. Petitioners' recusal motions seem to raise  
2 a concern that I would resolve that complaint, and I  
3 can understand Petitioners' concern in that regard.

4 Sometimes it makes sense to state the  
5 obvious, and in so doing, I'll note that the  
6 misconduct complaint against me will not be resolved  
7 by me, either as a result of the matters now pending  
8 before me, or otherwise. The misconduct complaint  
9 will be resolved independent of this proceeding and  
10 in accordance with the Courts' procedures now in  
11 effect for such matters. In any event, Petitioners'  
12 pending misconduct complaint against me seems to be  
13 the primary reason that Petitioners believe I should  
14 recuse myself, or be removed from this case.

15 Whether a judicial officer should recuse  
16 himself or herself from a proceeding is a decision  
17 first made by that judicial officer. Factors to be  
18 taken into account include the nature of the dispute  
19 to be resolved, the parties involved, and whether,  
20 all things considered, the judicial officer expect  
21 that he or she can fairly and impartially resolve the  
22 dispute presented.

23 We note that the trial in this case has  
24 been continued. That being so, and because it is  
25 unlikely that I will ultimately preside over the

1 trial given the manner in which trial sessions are  
2 scheduled by the Court, the relief sought in  
3 Petitioners' recusal motions will be given practical  
4 effect, regardless of the technical ruling, at least  
5 as far as the trial goes.

6 As to the other motions now before me, both  
7 are resolved upon technical grounds, without the need  
8 to assess the credibility of any witnesses. After  
9 taking into account the circumstances and considering  
10 the reasons advanced by petitions for my recusal, I  
11 am satisfied that I can fairly and impartially rule  
12 upon the motion now before me. Consequently,  
13 Petitioners' recusal motions will be denied.

14 Having decided that it is not inappropriate  
15 for me to rule on any of the pending motions, I'll  
16 next consider Petitioners' motion to dismiss for lack  
17 of jurisdiction as that motion should be decided  
18 before their motion for summary judgment is  
19 addressed.

20 The petition in this case was filed on  
21 April 13, 2016. According to the petition,  
22 Petitioners are disputing a "notice of deficiency",  
23 see sec. 6213(a), and a "notice of determination"  
24 concerning Petitioners' "request for relief from  
25 joint and several liability". See sec. 6015. There

1 is a notice of deficiency attached to the petition.  
2 Otherwise, there is no notice of determination of any  
3 sort attached to the petition and issued by  
4 Respondent that could provide the basis for the  
5 Court's jurisdiction over the years here in dispute,  
6 that is, 2012 and 2013. Nor is there anything in the  
7 record that suggests that such a notice of  
8 determination has been issued to ~~petitions~~ <sup>petitioners JC</sup> by  
9 Respondent.

10 For the sake completeness, we also note  
11 that there is nothing in the record that suggests  
12 that Respondent has failed to act in any manner that  
13 also could form the basis for the Court's  
14 jurisdiction with respect to the ~~year~~ <sup>years JC</sup> here in  
15 dispute.

16 We consider the Court's jurisdiction over  
17 the deficiencies determined in the notice of  
18 deficiency attached to the petition taking into  
19 account the date that the notice of deficiency was  
20 issued and mailed to the Petitioners and the date  
21 that the petition was filed in response. See sec.  
22 6213(a); Monge v. Commissioner, 93 T.C. 22, 27 (1989)  
23 (In a proceeding for the redetermination of a  
24 deficiency, the Court's jurisdiction is established  
25 upon the issuance of a valid notice of deficiency and

1 a timely-filed petition).

2 According to Petitioners, the notice of  
3 deficiency attached to the petition is not valid.  
4 Their attack in that regard, however, goes more to  
5 the merits of the adjustments contained in that  
6 notice, than it does to the validity of the notice  
7 itself. From what has been submitted, we are  
8 satisfied that the notice of deficiency attached to  
9 the petition is valid and the record shows that the  
10 petition is treated as having been filed timely in  
11 response to that notice. See secs 6213(a), 7502 and  
12 its corresponding regulation.

13 It follows that the Court has jurisdiction  
14 over the years here in dispute and Petitioners'  
15 motion to dismiss for lack of jurisdiction will be  
16 denied.

17 Lastly, we turn our attention to  
18 Petitioners' motion for summary judgment.  
19 Disposition upon summary judgment is only appropriate  
20 if there are no genuine disputes as to any material  
21 facts. See Rule 121. There has been nothing  
22 submitted by either party that shows that the  
23 relevant facts necessary for the resolution of any of  
24 the many issues contemplated in the notice of  
25 deficiency and pleadings have been agreed to by the



1 parties. Little else need to be noted to support the  
2 denial of Petitioners' motion for summary judgment.

3 To reflect the foregoing, an appropriate  
4 Order will be issued.

5 This concludes the Court's bench opinion in  
6 this matter.

7 (Whereupon, at 11:23 a.m., the above-  
8 entitled matter was concluded.)

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