

The examination and notice of deficiency

The Railroad Retirement Board reported to the IRS and to Mr. Woods, on Form SSA-1099, its payment of that RRI to Mr. Woods. The IRS examined the Woods's return and determined that the RRI had not been reported on it. On March 21, 2016, the IRS issued to Mr. and Mrs. Woods a notice of deficiency ("NOD") that increased their income by 85% of that RRI--i.e., by \$7,454--and determined a resulting deficiency of income tax of \$1,125. (ECF 1; ECF 16, Ex. A.)

Proceedings in this Court

On June 20, 2016, petitioners timely mailed their petition to this Court. At that time they resided in South Carolina. (ECF 6, Ex. A, para. 1.)

The Commissioner proposed to petitioners that they enter into stipulations of fact pursuant to Rule 91. On July 27, 2017, we issued to petitioners an order (ECF 7) to show cause why the proposed stipulations should not be deemed stipulated. After receiving a deficient response from petitioners, we made absolute that order to show cause by our order of August 17, 2017 (ECF 11), and with one exception we deemed stipulated the facts that the Commissioner had proposed.

The Commissioner then filed a motion for summary judgment (ECF 15). In its first 8 numbered paragraphs, the motion alleges facts that the Commissioner supports by four documents, two of which (the NOD and petitioners' 2013 tax return) are authenticated by the declaration (ECF 16) of attorney Olivia H. Rembach, who serves as Commissioner's counsel in this case, and the other two of which are self-authenticating under Fed. R. Evid. 902.

Petitioners filed a response (ECF 20), in which they deny 5 of the 8 factual paragraphs in the Commissioner's motion. In each instance their denial consists simply of "Paragraph 3 is denied; paragraph 5 is denied; paragraph 6 is denied", and so on. Submitted with the response is the declaration of Mr. Woods stating as follows:

1. The information supplied to the Court by Ms. Rembach, the IRS attorney is not totally correct; some of the information does not match the records of the petitioners; other information has been redacted, or covered up, and is not the same as the information supplied to the IRS by petitioners.

2. The information that Ms. Rembach claims that was supplied by the U.S. Railroad Retirement Board is incorrect also, petitioners partially filled-out the tax return for the year in question, and then asked the IRS to compute the tax for the year in question. The IRS computed the tax for the year in question, and are now complaining about their own figures. Petitioners paid the exact amounts as computed by the IRS for the year question. Petitioners do not owe additional taxes for the year in question.

3. Ms. Rembach does not have personal knowledge of the information she has supplied to the Court, and for this reason, and other reasons, Ms. Rembach is not a competent witness.

The Commissioner filed a reply (ECF 21).

Discussion

Summary judgment principles

For purposes of summary judgment under Rule 121, we resolve in favor of the non-movant (here, petitioners) genuine disputes as to material facts, if there are any such genuine disputes. However, Rule 121(d), sentence 3, provides:

When a motion for summary judgment is made and supported as provided in this Rule, an adverse party [i.e., petitioners] may not rest upon the mere allegations or denials of such party's pleading, but such party's response, by affidavits or declarations or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine dispute for trial.

Petitioners have not set forth nor supported specific facts. In their opposition they made blanket denials (including denials of manifestly true facts that we have previously deemed stipulated), and they failed to "set forth specific facts showing that there is a genuine dispute for trial". They do not say which facts are not "totally correct", nor what different information that "records of the petitioners" might show, nor what material information was redacted from the documents before us. Their complaint that respondent's counsel "has been converted from being an advocate in this case, to a witness" has no merit, since the only facts for which her declaration is used are authentication of the Woods's 2013 tax return

and the NOD. Those facts are “uncontested”, see Rule 3.7(a)(1) of the Model Rules of Professional Conduct.

The material facts here are simply that Mr. Woods received the RRI and that petitioners did not report any of that income on their return. Those facts are not in dispute.

Taxation of RRI

Tier 1 railroad retirement benefits are, pursuant to section 86(d)(1)(B), included in income as “social security benefits” under section 86. (Petitioners have not advanced any reason that Mr. Woods’s RRI did not constitute “tier 1” benefits. “Tier 2” benefits are likewise included in income under section 72(r)(1), see Gibson v. Commissioner, T.C. Memo. 1996-140, and petitioners have not advanced any reason that Mr. Woods’s RRI would not have been taxable if it had consisted of tier 2 benefits.)

Tier 1 RRI benefits are taxed under a formula that, as is applicable here, includes in income 85% of the RRI if the taxpayers’ modified AGI (not counting the RRI) exceeds \$44,000. Sec. 86(c)(2)(B). The AGI that petitioners reported (i.e., \$59,047) was well over that amount, and they have not suggested that any of the modifications to AGI provided in section 86(b)(2) are applicable here (and it appears that none are). Thus, Mr. Woods’s RRI of \$8,769 was includible in his 2013 income to the extent of 85%--i.e., \$7,454. This is the amount that the IRS added to his income in the NOD, and petitioners have not suggested that there is any computational error in the resulting tax deficiency of \$1,125. It is therefore

ORDERED that respondent’s motion for summary judgment is granted; and it is further

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioners Mell Woods and Gloria Woods for the tax year 2013 in the amount of \$1,125.

**(Signed) David Gustafson
Judge**

ENTERED: **DEC 29 2017**