

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

| | | |
|-----------------------------------|---|----------------------|
| JOHANNES LAMPRECHT & |) | |
| LINDA LAMPRECHT, |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Docket No. 14410-15. |
| |) | |
| COMMISSIONER OF INTERNAL REVENUE, |) | |
| |) | |
| Respondent |) | |

ORDER

Now before us are the Commissioner’s “Motion to Compel Responses to Interrogatories” (ECF 66) and “Motion to Compel Production of Documents” (ECF 67) filed on November 13, 2017. On February 20, 2018, the Commissioner filed a status report (ECF 69) that concedes that the requirements of section 6751(b)(1) were not met with respect to the section 6663 fraud penalty for the 2006 and 2007 tax years that he raised in his answer. In view of that concession, we will order the Commissioner to supplement his motions to compel, and we will order the parties to propose a schedule for further proceedings.

Background

On January 9, 2015, the Internal Revenue Service (“IRS”) issued to petitioners a statutory notice of deficiency (“NOD”) for accuracy-related penalties under section 6662 for the 2006 and 2007 tax years. Petitioners filed their petition with this Court asserting, among other arguments, that the statute of limitations precludes the IRS from assessing section 6662 penalties. (ECF 1).

On August 3, 2015, the Commissioner filed his answer, which raised section 6663 fraud penalties as a new matter. (ECF 3 at 6-16, ¶55-56). In their reply filed

September 14, 2015, petitioners alleged failure to comply with section 6751 (requiring written supervisory approval of the “initial determination” of a penalty) as a defense to the section 6663 fraud penalties. (ECF 4 at 11, ¶63).

On November 13, 2017, the Commissioner filed his motions to compel. The Commissioner sought, among other things, information relevant to his contentions as to fraud.

On December 20, 2017, the Court issued its latest opinion in Graev v. Commissioner, 149 T.C. No. 23, holding that the Commissioner’s burden of production under section 7491(c) includes establishing compliance with the supervisory approval requirement of section 6751(b).

On January 19, 2018, we issued an order that bifurcated the case and calendared it for a special trial session on March 8, 2018, to be directed solely to the issue of the IRS’s compliance with section 6751.

On February 20, 2018, the Commissioner filed his status report conceding that the requirements of section 6751(b)(1) were not met with respect to the section 6663 fraud penalty that it raised in its answer for the 2006 and 2007 tax years. The Commissioner indicates that he is prepared to introduce evidence on the issue of compliance with section 6751(b)(1) in connection with the section 6662 penalty but that trial is no longer required on that issue as to the fraud penalty. (ECF 69 at 2, ¶7-10.) The Commissioner’s status report does not comment on the issue of fraud as it relates to the statute of limitations.

Discussion

Aside from the issue of compliance with section 6751 as to the fraud penalty (now conceded), the principal issue in this case is the statute of limitations for the assertion of the section 6662 penalty. Normally a tax must be assessed within three years after the return was filed. Sec. 6501(a). In certain circumstances the statute of limitations is extended to six years, is tolled, or is extended indefinitely. See, e.g., secs. 6501(a); 6501(c); and 6501(e)(1)(A).

Fraud was the main argument advanced by the Commissioner (among other alternatives) for why the statute of limitations remained open through the time that the IRS issued the NOD, pursuant to section 6501(c)(1). (ECF 30 at 7, ¶20(a).) Section 6501(c)(1) provides that the statute of limitations is extended indefinitely if a return is false or fraudulent, meaning that “the tax may be assessed, or a

proceeding in court for collection of such tax may be begun without assessment, at any time.”

The Commissioner stated that in the event he “does not prove that petitioners’ returns were false or fraudulent, the Commissioner’s alternative position [among others], is that the accuracy-related penalty applies in each year as set forth in the statutory notice of deficiency.” (ECF 30 at 7-8, ¶ 20-21). While the Commissioner’s February 20, 2018, status report concedes that the requirements of section 6751(b) were not met with respect to the section 6663 fraud penalty, the status report is silent as to whether the Commissioner intends to concede the issue of fraud in its entirety, or if he still plans to argue fraud for purposes of the statute of limitation issue (i.e., section 6501(c)(1)).

Discovery may be used to obtain information “which is relevant to the subject matter involved in the pending case.” Rule 70(b). Because of the Commissioner’s recent concession as to the fraud penalty, the scope of the issues in this case has changed, and the pertinent subject matter may have changed. Accordingly, we will reserve ruling on the Commissioner’s motions to compel until the Commissioner clarifies whether he intends to litigate fraud for the purpose of the statute of limitations issue (i.e., pursuant to section 6501(c)(1)).

It is therefore

ORDERED that this case is stricken from the calendar of the Court’s Washington, D.C. Special Session on March 8, 2018. It is further

ORDERED that, no later than March 9, 2018, the Commissioner shall file a status report stating his position as to the statute of limitations and the arguments he relies on to show that the statute of limitations does not bar the assessment of the accuracy-related penalty still at issue in this case. The report should explain whether he intends to argue fraud for the purpose of section 6501(c)(1). If the Commissioner’s concession affects the relevance of the information sought in his motions to compel, then he should by that same date file amended motions to the extent necessary to bring his motions into conformity with his current position. It is further

ORDERED that, no later than March 23, 2018, the parties shall file a joint status report (or, if that is not expedient, then separate reports) and shall include their recommendations as to further proceedings in this case (including a deadline for petitioners' response to the motions to compel).

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
February 21, 2018