

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

FRANK W. DOLLARHIDE & MICHELLE D.)	
DOLLARHIDE,)	
)	
Petitioner(s),)	ALS
)	
v.)	Docket No. 23113-12.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	
)	
)	

ORDER AND DECISION

This was one of three consolidated cases arising from notices of deficiency that the IRS sent the Dollarhides and their company for the 2006 and 2007 tax years. The parties settled all issues before trial, but reached an impasse when it came to agreeing how to draft decision documents. The IRS finally moved for entry of decision in each of the three cases on December 5, 2017. The parties have fully briefed those motions.

Neither party objects to the computation of the Dollarhides' tax liability in this case -- which is for the Dollarhides' 2006 tax year -- and the IRS concedes the penalties. But the Dollarhides want credit for payments -- payments so much larger than their liability that they should get a big refund. But there's a problem: The payments were mostly in the form of withholding from the Dollarhides' pay back in 2006, plus a substantial amount of excess Social Security tax. The Internal Revenue Code says that money that is withheld from taxpayers' pay and excess Social Security tax does count toward their income-tax debt, and is treated as being paid all at once on the due date of the return, *see* I.R.C. § 6513(b). This means that the Dollarhides are treated as having paid more than \$47,000 in April 2007, when they should have filed their return. But the Dollarhides didn't file their 2006 return

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until February 3, 2011, and it was only on *that* return that they reported the big withholding and excess Social Security credits.

In tax law, filing a return that shows credits that are larger than the tax owed means the return is also a claim for a refund of that excess amount. The problem here is that the Dollarhides were claiming a refund more than three years after the Code says they are treated as having been paid. (February 3, 2011 is almost four years after April 2007.) Section 6511(b)(2) of the Code says that they have only three years to claim this refund. They don't have to pay the actual tax they owe twice, but this Court cannot legally require the IRS to refund the excess amount that they paid because of this three-year time limit.

It is therefore

ORDERED that respondent's December 5, 2017 motion for entry of decision is granted. It is also

ORDERED and DECIDED that there is a deficiency in income tax¹ due from petitioners for the tax year 2006 of \$11,111, but no addition to tax under I.R.C. § 6651(a)(1) and no penalty under I.R.C. § 6662. There is also no refund of an overpayment in income tax owed because of I.R.C. § 6511(b)(2).

**(Signed) Mark V. Holmes
Judge**

ENTERED: **MAR 19 2018**

¹ A deficiency in income tax is the difference between the tax calculated by a taxpayer and shown on his return and the amount that he should have shown on his return. I.R.C. § 6211(a). It is not the same as the amount he owes to the IRS after taking into account withholding credits.