

UNITED STATES TAX COURT  
 WASHINGTON, DC 20217

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

**ORDER**

On April 20, 2018, petitioner Linda Lamprecht, through counsel, filed a motion (see ECF 78) for summary judgment in her own favor. Our order of April 24, 2018 (ECF 80), observed that “the memorandum in support of her motion states very few facts; it cites no evidence”; and we criticized petitioner’s apparent intention to “leave to respondent (or perhaps to the Court) the task of extracting from prior filings ‘the facts in this action that are relevant to this motion’ and then the task of searching the record to see whether those alleged facts can be supported by materials in the record. Rule 121 does not permit this approach.” We denied the motion.

Later the same day, Ms. Lamprecht’s counsel filed another motion for summary judgment (ECF 81) and a supporting memorandum (ECF 82). No affidavits or other documents are submitted with it. The memorandum (at 16) cites Mr. and Ms. Lamprecht’s original returns as they appear in a prior filing; but it does not cite amended returns that it alleges are qualified amended returns (at 11). The memorandum appears to assert that alleged fraud attributed to Mr. Lamprecht cannot be attributed to Ms. Lamprecht, but it gives no factual information whatsoever that would permit this distinction to be examined. The memorandum (at 21) cites an affidavit that appears in a prior filing to support an assertion about the IRS’s intention to issue a summons; but the memorandum generally alleges facts about issuance of the summons, summons litigation, and withdrawal of the

summons, for which allegations it cites no support. Once again, petitioner seems to assume that the Court will itself derive the specific facts from somewhere in the record, or will assume facts in petitioner's favor unless respondent disputes them. This reflects a misunderstanding of the movant's burden under Rule 121. It is

ORDERED that petitioner's motion for summary judgment (ECF 81) is denied. It is further

ORDERED that neither petitioner shall hereafter file a motion for summary judgment without first scheduling and conducting a telephone conference with the Court and respondent. In determining whether to attempt to file such a motion, petitioners should keep in mind the following: (1) Stone v. Commissioner, 56 T.C. 213 (1971), relied on in petitioner's memorandum, does indeed distinguish between spouses in a fraud context, even when they have filed a joint return. However, what that case held was that Mrs. Stone's liability for fraud penalty depended on a showing that she herself (not Mr. Stone) was guilty of fraud. As to the running of the statute of limitations, however, Stone explicitly held that "proof of fraud by Mr. Stone prevents the running of the statute of limitations so that Mrs. Stone remains liable for the deficiencies for the years in issue". Id. at 228 (emphasis added). (Of course, an "innocent spouse" claim under section 6015 might, as Stone acknowledged, change the outcome; but see point (3) below.) (2) Section 6751(b) makes no mention of "fraud" in particular and makes no provision whatsoever affecting the running of the statute of limitations under section 6501(c)(1) as the result of "a false or fraudulent return". Even if we were to accept petitioner's novel suggestion that section 6501(c)(1) constitutes a "penalty" of sorts, it would not be the sort of penalty affected by section 6751(b), which provides that "No penalty shall be assessed". A statute of limitations is not "assessed". (3) If one of the petitioners in this case has separate contentions that would relieve her of liability to the relative disadvantage of the other petitioner, then due attention should be paid to whether a conflict of interest might exist that would prevent one attorney from representing both petitioners. See Rule 24(g).

**(Signed) David Gustafson**  
**Judge**

Dated: Washington, D.C.  
April 25, 2018