

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CLC

MATTHIAS RYKERT,)
)
Petitioner,)
)
v.) Docket No. 10427-17
)
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 petitioner 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 Los Angeles, California, 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.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
May 24, 2018

SERVED May 25 2018

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
2 May 17, 2018
3 Matthias Rykert v. Commissioner of Internal Revenue
4 Docket No. 10427-17

5 The Court has decided to render oral findings of
6 fact and opinion in this case and the following represents
7 the Court's oral findings of fact and opinion (bench
8 opinion). Unless otherwise noted, section references made
9 in this bench opinion are to the Internal Revenue Code of
10 1986, as amended, in effect for the relevant period, and
11 Rule references are to the Tax Court Rules of Practice and
12 Procedure. This bench opinion is made pursuant to the
13 authority granted by section 7459(b) and Rule 152.

14 This proceeding for the redetermination of a
15 deficiency is conducted pursuant to assignment by Order
16 dated March 16, 2018, in accordance with section
17 7443A(b) (3) and Rules 180, 181 and 182. Except as
18 provided in Rule 152(c), this bench opinion shall not be
19 cited as authority.

20 In a notice of deficiency dated February 6, 2017
21 (notice), a copy of which is attached to the petition,
22 respondent determined a \$13,695 deficiency in petitioner's
23 2014 Federal income tax and imposed a \$2,739 section
24 6662(a) penalty. According to the notice, the penalty is
25 applicable because the underpayment of tax required to

1 have been shown on petitioner's 2014 Federal income tax
2 return (return) is a substantial understatement of tax
3 within the meaning of section 6662(d). The deficiency
4 results from numerous items of income that respondent
5 claims petitioner failed to report on his return.

6 The notice is not signed by an official of the
7 Internal Revenue Service. Other than possible hints
8 suggested by an address of an office of the Internal
9 Revenue Service in Fresno, California, and/or references
10 to initials and symbols, the notice does not, on its face,
11 reveal who or what function of the Internal Revenue
12 Service authorized its issuance.

13 With respect to the determinations made in the
14 notice, nothing submitted by petitioner suggests that
15 petitioner did not receive the items of income attributed
16 to him in that document or that the amounts of the items
17 are erroneous in some manner or another. Instead,
18 according to the petition, the notice is not valid because
19 it was not issued by a "district director, a service
20 center director, or a regional director of appeals".
21 Shortly after the petition was filed, petitioner's motion
22 to dismiss for lack of jurisdiction was filed on August
23 21, 2017 (motion). Consistent with the allegations
24 contained in the petition, according to the motion, the
25 notice was not issued by a "district director" or "service

1 center director" and therefore, according to petitioner,
2 the notice is invalid and the case should be dismissed for
3 lack of jurisdiction upon that ground.

4 A hearing was conducted on the motion in Los
5 Angeles, California, on May 14, 2018. Petitioner appeared
6 on his own behalf and made an oral motion for a
7 continuance. Comments made by petitioner during the
8 hearing suggest that the position he has taken with
9 respect to the validity of the notice might be misguided
10 based upon advice he was receiving from an organization
11 whose status to practice law is questionable. Rather than
12 treat his comments as a concession to jurisdiction, under
13 the circumstances we think it better to address the
14 concerns raised in the motion regarding the Court's
15 jurisdiction in this matter. Christopher J. Richmond
16 appeared on behalf of respondent, argued and presented
17 evidence in opposition to the motion, and objected to
18 petitioner's oral motion for a continuance.

19 As noted, a review of the notice shows that it
20 is not signed by an official of the Internal Revenue
21 Service, but it is well settled that a notice of
22 deficiency need not be signed in order to be valid. See
23 Urban v. Commissioner, 964 F.2d 888, 889 (9th Cir. 1992),
24 aff'g T.C. Memo. 1991-220. Otherwise, petitioner's motion
25 proceeds in reliance upon outdated authorities, including

1 an Internal Revenue Service regulation, all issued or
2 published prior to the Internal Revenue Service
3 Restructuring and Reform Act of 1998, and none of which
4 support the motion under consideration. Nevertheless, the
5 lack of readily identifiable information on the face of
6 the notice regarding its source requires respondent to
7 respond to reasonable inquiries regarding its validity.
8 Evidence offered by respondent at the hearing satisfies
9 that requirement. Contrary to petitioner's assertions,
10 the record shows that the notice was issued by an official
11 of the Internal Revenue Service who held an office listed
12 in Delegation Order 4-8, Internal Revenue Manual, pt.
13 1.2.43.9 (Feb. 10, 2004), which establishes the offices of
14 the Internal Revenue Service authorized to issue notices
15 of deficiency. It follows that the notice satisfies the
16 statutory requirement that the deficiency be determined
17 and the notice sent by someone "duly authorized by the
18 Secretary of the Treasury directly, or indirectly by one
19 or more redelegations of authority". See secs. 6212(a);
20 7701(a)(11)(B); 7701(a)(12)(A)(I). It follows that the
21 notice is valid and the motion must be denied.

22 In support of his oral motion for a continuance
23 of trial, petitioner requested that he be given time to
24 obtain legal representation in connection with the
25 substantive issues that might arise from the adjustments

1 made in the notice, although in the petition, petitioner
2 assigns no error to any of those adjustments. At the
3 hearing respondent noted his objection to petitioner's
4 oral motion, and we note that petitioner has already had
5 ample time to obtain counsel. Be that as it may, if
6 petitioner does secure representation, as he claims he
7 intends to do, we expect that the insertion of competent
8 counsel on petitioner's behalf might very well allow for
9 the disposition of this case without the need for trial.
10 That being so, we will grant petitioner's oral motion for
11 continuance, retain jurisdiction over the matter, and to
12 the extent that a trial is necessary to resolve any
13 remaining disputes between the parties, set the case for
14 trial during the trial session of the Court scheduled to
15 begin in Los Angeles, California, on December 3, 2018.

16 To reflect the foregoing, an appropriate Order
17 will be issued.

18 This concludes the Court's bench opinion in this
19 case.

20 (Whereupon, at 9:24 a.m., the above-entitled
21 matter was concluded.)

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