

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

CATHERINE ANN HEATH,)	
)	
Petitioner,)	
)	
v.)	Docket No. 6155-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Pending in this case are (1) respondent’s Motion For Summary Judgment, filed September 5, 2017, pursuant to Rule 121¹, and supplemented October 26, 2017, and (2) petitioner’s Motion To Change Or Correct Caption, filed March 15, 2018. Petitioner filed a Response to respondent’s motion on October 11, 2017, objecting to its granting; and after respondent had supplemented his motion, petitioner filed a Response To First Supplement on March 26, 2018, continuing to object. On April 4, 2018, respondent filed a Notice Of Objection to petitioner’s Motion To Change Or Correct Caption. Most recently, by Order dated August 6, 2018, both of the aforementioned motions were assigned to the undersigned for disposition.

Petitioner resided in the State of Illinois at the time that the petition was filed with the Court.

The petition in this case was filed on March 13, 2017, contesting a notice of deficiency for tax year 2014. The notice of deficiency, which was issued in the names of Michael Heath and C. Eberhardt Heath, determined a deficiency in income tax in the amount of \$10,241 and a penalty under section 6662(a) for substantial understatement of tax in the amount of \$2,048.

¹ Unless otherwise indicated, all Rule reference are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code of 1986, as amended, in effect at all relevant times.

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Respondent's Motion For Summary Judgment, As Supplemented

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment on all or any part of the legal issues in controversy. Rule 121(a). The Court may grant summary judgment only “if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law.” Rule 121(a) and (b); see Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

Respondent, as the moving party, bears the burden of proving that no genuine dispute exists as to any material fact and that respondent is entitled to judgment as a matter of law. See FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. at 529. In deciding whether to grant summary judgment, the factual materials and inferences drawn from them must be considered in the light most favorable to the nonmoving party. FPL Group, Inc. v. Commissioner, 115 T.C. at 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529. The party opposing summary judgment must set forth specific facts which show that a question of genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988); King v. Commissioner, 87 T.C. 1213, 1217 (1986); Shepherd v. Commissioner, T.C. Memo. 1997-555, 1997 Tax Ct. Memo LEXIS 645, at *7.

Respondent asserts in his motion that the disputed portion of the deficiency² and related accuracy-related penalty are based on unreported income from K-1s issued for 2014 by two flow-through entities (Woodland Pines Holdings LLC and Davis Lodging LLC) in which petitioner held an interest. Respondent offers as evidence of petitioner's interest in these entities a copy of the operating agreements of both entities showing a 49% interest held by petitioner. Respondent also offers a letter from the accounting firm representing these entities as evidence that the firm issued K-1s to petitioner for the year at issue.

² Respondent asserts that petitioner does not dispute a \$56 adjustment that is attributable to interest income from Alliant Credit Union.

In her October 11, 2017 Response, petitioner argues that the aforementioned K-1s are inaccurate and erroneous. Thereafter, respondent filed the First Supplement to his motion, wherein he conceded that his motion should not be granted as to the factual correctness of the K-1s or the accuracy-related penalty. Nonetheless, respondent, requests that the Court recharacterize his motion as one for partial summary judgment on the issue whether petitioner was a part owner of the companies that issued the K-1s.

As noted, for purposes of deciding a motion for summary judgment, facts and inferences drawn from the record must be considered in the light most favorable to the nonmoving party. Here, petitioner asserts that she was terminated from her position as Operations Manager of these companies in December 2013, and she disputes that she held an ownership interest in the companies in 2014. Whether petitioner held such an ownership interest is a material fact in dispute that directly correlates to whether these companies should have issued K-1s to petitioner. Because of that, as well as respondent's concession that there is dispute as to the accuracy of the K-1s, the Court will deny respondent's Motion For Summary Judgment, as supplemented.

Motion To Change Or Correct Caption

The Tax Court is a court of limited jurisdiction and may exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In addition, jurisdiction must be proven affirmatively, and a taxpayer invoking the Court's jurisdiction bears the burden of proving that the Court has jurisdiction over the taxpayer's case. See Fehrs. v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177 180 (1960).

In a case seeking the redetermination of a deficiency, the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. Rule 13(c); Brown v. Commissioner, 68 T.C. 215, 220 (1982). Section 6213(a) generally requires a taxpayer to file a petition within 90 days after respondent mails the notice of deficiency. The Court has no authority to extend the 90-day period. Joannou v. Commissioner, 33 T.C. 868, 869 (1960).

Petitioner filed the petition to commence this case on March 13, 2017, and attached as an exhibit a copy of the notice of deficiency, which was issued to her and her husband on February 6, 2017. The petition was signed only by Catherine Heath. In general, when a notice of deficiency is issued to more than one person,

each person wishing to contest it must do so by signing the petition within the specified 90-day period in order to invoke the Court's jurisdiction. See Rules 34(a), 34(b)(7); cf. Rule 41(a) (“No amendment shall be allowed after expiration of the time for filing the petition, however, which would involve conferring jurisdiction on the Court over a matter which otherwise would not come within its jurisdiction under the petition as then on file.”). However, “a case timely brought shall not be dismissed on the ground that it is not properly brought on behalf of a party until a reasonable time has been allowed after objection for ratification by such party of the bringing of the case”. Rule 60(a). If such ratification is allowed, it will relate back to the time of the filing of the petition. Rule 41(d).

The Court has allowed an imperfect petition signed by one petitioner to be subsequently amended after the 90-day statutory period when there is evidence that the original signatory was authorized to file the petition on behalf of a non-signing petitioner. Brooks v. Commissioner, 63 T.C. 709 (1975). However, the Court individually considers such situations to decide whether there is “[c]lear evidence * * * to show that the original petition was intended to be a joint petition * * *”. Id. at 713. See Rule 60(a). The Court applies an “objective indication” test for deciding whether the original petition was intended as a joint petition. InverWorld Ltd., v. Commissioner of Internal Revenue, 979 F.2d 868, 875-876 (D.C. Cir. 1992), aff'g 98 T.C. 70 (1992).

The petition filed in this case does not objectively indicate an intent to be a joint petition by Catherine Heath and her husband Michael Heath. Catherine Heath filed and signed the handwritten petition herself. She captioned the case in her name alone. In explaining her grounds for contesting the alleged deficiency she repeatedly used the first-person personal and possessive pronouns, both in the petition and in a handwritten note on a copy of the deficiency notice that was attached to the petition. Petitioner also attached two letters to her petition, signed only by her, wherein she exclusively uses the first-person personal pronoun in contesting the principal adjustment underlying respondent's deficiency determination, which adjustment appears to involve only her and not her husband as well. Indeed, petitioner states in her Motion To Change Or Correct Caption that the underlying tax issue had nothing to do with her husband and “arose before they were married.” Further, petitioner filed the Motion To Change Or Correct Caption virtually a year after she filed the petition, six months after counsel filed an entry of appearance³, and admittedly in response to respondent's collection efforts

³ Notably, counsel entered his appearance only for petitioner and not for petitioner and her husband. Further, the Motion To Change Or Correct Caption, which was

directed at her husband. In sum, there is no objective indication that the original petition was intended to be a joint petition. Consequently, the Court will deny petitioner's Motion To Change Or Correct Caption. Whether respondent might agree, administratively, to defer collection against petitioner's husband pending resolution of the present case is something for discussion between the parties and not a matter in which the Court may, or will, become involved.

In view of the foregoing, and for cause, it is

ORDERED that respondent's Motion For Summary Judgment, filed September 5, 2017, and supplemented October 26, 2017, is denied. It is further

ORDERED that petitioner's Motion To Change Or Correct Caption, filed March 15, 2018, is denied.

(Signed) Robert N. Armen
Special Trial Judge

Dated: Washington, D.C.
August 16, 2018

executed by petitioner's counsel, was not accompanied by a ratification executed by petitioner's husband. Such a ratification was filed in June 2018, but only after respondent had objected to the granting of petitioner's motion and after the Court had afforded the husband an opportunity to ratify the petition.