

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LUMINITA ROMAN, ET AL.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 10878-16, 7671-17
)	
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 petitioners and to respondent a copy of the pages of the transcript of the trial in the above cases 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 cases were heard.

In accordance with the oral findings of fact and opinion, an appropriate order denying petitioners' motions will be issued.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
December 27, 2018

SERVED Dec 28 2018

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
2 December 6, 2018
3 Luminita Roman, et al. v. Commissioner of Internal Revenue
4 Docket Nos. 10878-16 and 7671-17 Consolidated

5 THE COURT: The Court has decided to render oral
6 findings of fact and opinion in this consolidated case and
7 the following represents the Court's oral findings of fact
8 and opinion (bench opinion). Section references made in this
9 bench opinion are to the Internal Revenue Code of 1986, as
10 amended, in effect for the relevant period, and Rule
11 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. Except as
14 provided in Rule 152(c), this bench opinion shall not be
15 cited as authority.

16 Each case for the redetermination of a
17 deficiency consolidated in this proceeding was assigned to
18 the undersigned solely for the purpose of ruling on
19 petitioners' motions to dismiss for lack of jurisdiction, both
20 filed on February 14, 2018. See section 7443A(b)(7). A
21 hearing was conducted on the motions in Los Angeles,
22 California, on May 15, 2018, and a further hearing was
23 conducted on the motions in Los Angeles, California, on
24 December 4, 2018. Luminita Roman and Gabriel Roman
25 appeared, both unrepresented, at both hearings. Under the

1 circumstances, the Court allowed Luminita Roman to speak on
2 behalf of Gabriel Roman at the further hearing. Alexander
3 DeVitis, Christine A. Fukushima and Andrea M. Faldermeyer
4 appeared on behalf of respondent at the December 4, 2018,
5 further hearing. Prior to the further hearing, the Court
6 reviewed the submissions of the parties filed between the
7 dates of the May 15, 2018, hearing and the further hearing.
8 Those submissions, along with statements and arguments
9 presented at the hearings are taken into account in the
10 findings and rulings embodied in this bench opinion.

11 According to petitioners, the Court is without
12 jurisdiction in these cases because the notice of deficiency
13 that forms the basis for each one is not valid. See Monge v.
14 Commissioner, 93 T.C. 22, 27 (1989) (A valid notice of
15 deficiency and a timely petition are essential to the
16 Court's jurisdiction in a case for the redetermination of a
17 deficiency.) As petitioners view the matter, neither notice of
18 deficiency is valid because neither was authorized by an
19 individual with the authority to issue a notice of
20 deficiency. As petitioners view the matter, each notice was
21 generated by a computer, and computers have not been delegated
22 the Commissioner's authority to issue notices of deficiency.
23 In support of their point, they refer to certain provisions of
24 the Internal Revenue Manual that restrict further delegations
25 of the authority to issue a notice of deficiency. In that

1 regard, we wonder if petitioners are confusing the authority
2 to issue a notice of deficiency with the mechanical process of
3 preparing, creating or printing one, but we doubt that we
4 could convince petitioners to recognize that distinction, and
5 we need not do so in order to resolve the motions here under
6 consideration.

7 Instead, we begin by noting some fundamental
8 principles that will inform our findings and rulings.
9 First, it has long been established that a notice of
10 deficiency need not take any specific form and is valid if
11 it puts a taxpayer on notice that the Commissioner intends
12 to assess a tax. See Olsen v. Helvering, 88 F.2d 650, 651
13 (2d Cir. 1937). Second, a notice of deficiency need not be
14 signed to be valid. Urban v. Commissioner, 964 F.2d 888,
15 889 (9th Cir. 1992), aff'g T.C. Memo. 1991-220; Banister
16 v. Commissioner, T.C. Memo. 2015-10, aff'd sub nom., 664 F.
17 App'x 673 (9th Cir. 2016). Third, various provisions of the
18 Internal Revenue Manual, cited in papers submitted by
19 respondent as well as by petitioners, specify what offices
20 and/or officers of the Internal Revenue Service have been
21 delegated, the Commissioner's authority to issue a notice of
22 deficiency pursuant to section 6212(a).

23 Set against these fundamental principles, we examine
24 the two notices of deficiency involved in this proceeding.
25 In so doing, we find that it is beyond disagreement that both

1 adequately advise each petitioner that the Commissioner intends
2 to assess an income tax.

3 We further find that the lack of signature on the
4 notice of deficiency that forms the basis for docket number
5 10878-16 does not affect its validity, and that the notice was
6 issued by an office or officer of the Internal Revenue Service
7 authorized to do so.

8 To the extent that respondent bears any burden to
9 establish that the notice of deficiency that forms the basis
10 for docket number 7671-17 has been properly issued, we find
11 that burden to have been satisfied. To the extent that the
12 burden rests with petitioners to establish that the
13 individual who issued of the notice of deficiency that forms
14 the basis for docket number 7671-17 was not authorized to do
15 so, we find that they have failed to satisfy that burden.
16 See *Perlmutter v. Commissioner*, 44 T.C. 382, 399 (1965).

17 Lastly we find that both notices of deficiency, one
18 showing the signature of an Internal Revenue employee and the
19 other unsigned, were issued by offices or officials of the
20 Internal Revenue Service duly authorized by delegation order
21 to have done so. The fact that respondent might have
22 provided inaccurate information to petitioners regarding who
23 was involved in the issuance of one of the notices of
24 deficiency has no effect on the validity of that notice.

25 Because each notice of deficiency is valid, and

1 because each petition was timely filed in response to each
2 notice, the Court has jurisdiction over both of the deficiency
3 cases consolidated in this proceeding. It follows that
4 petitioners' motions must be denied.

5 To reflect the foregoing, an appropriate order
6 denying petitioners' motions will be issued.

7 (Whereupon, at 11:18 a.m., the above-entitled
8 matter was concluded.)

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