

UNITED STATES TAX COURT
WASHINGTON, DC 20217

YASUKO OGAWA,)	
)	
Petitioner,)	
)	
v.)	Docket No. 3020-14.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	
)	
)	
)	
)	

ORDER

On December 20, 2018, the Court entered a Stipulated Decision to the effect: (1) that there are no deficiencies in Federal income tax due from, or overpayments due to, petitioner for the taxable years 2008, 2009, or 2011; (2) that there are no additions to tax due from petitioner for 2008, 2009, or 2011 under section 6651(a)(1) or (2);¹ and (3) that there are no additions to tax due from petitioner for 2009 or 2011 under section 6654.

On January 18, 2019, petitioner Yasuko Ogawa and her spouse, petitioner Haruki Yamada at Docket No. 2718-14,² filed a Motion for Reasonable Litigation or Administrative Costs, a Memorandum in support thereof, and the Declarations of Joseph E. Mudd, Haruki Yamada, and Yasuko Ogawa (collectively, Motion Papers).

¹All section references are to the Internal Revenue Code of 1986, as amended and in effect for the years at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

²On February 9, 2015, petitioners Haruki Yamada and Yasuko Ogawa filed an unopposed Motion to Consolidate Docket Nos. 2718-14 and 3020-14, respectively, which the Court granted on February 12, 2015.

Claims for litigation and administrative costs are governed by section 7430 and Rules 230 through 233. Under Rule 232(f), “[t]he Court’s disposition of a motion for reasonable litigation or administrative costs shall be included in the decision entered in the case.” See also Note accompanying amendment to Rule 232(f), 93 T.C. 1021 (noting that the requirement “is designed to simplify appeal procedures by incorporating into a single document the Court’s disposition of both the substantive issues in the case and the motion for reasonable litigation or administrative costs”). In sum, the Court’s Rules governing awards of litigation costs contemplate only a single decision being entered in a case.

Upon review of the Motion Papers, it is evident that petitioner did not intend for the Stipulated Decision entered by the Court to be conclusive of this matter. The Court has routinely vacated stipulated decisions where a taxpayer who did not intend to waive a claim for litigation costs promptly sought vacation of a stipulated decision that was silent on the matter. See, e.g., Swanson v. Commissioner, 106 T.C. 76 (1996); Cassuto v. Commissioner, 93 T.C. 256 (1989), aff’d in part, rev’d in part and remanded, 936 F.2d 736 (2d Cir. 1991); Hennessey v. Commissioner, T.C. Memo. 2007-131.

Here, petitioner promptly sought relief from the error, albeit not by seeking that the Stipulated Decision be vacated. Nevertheless, in order to expeditiously accomplish what petitioner intended, we will vacate the Stipulated Decision and direct the Clerk of the Court to recharacterize it as the parties’ Stipulation of Settled Issues.

However, our review of petitioners’ Motion Papers reveals two defects therein. First, petitioners have not filed a Stipulation of Settled Issues in accordance with Rule 231(c), which provides:

If some or all of the issues in a case (other than litigation and administrative costs) have been settled by the parties, then a motion for an award of reasonable litigation or administrative costs shall be accompanied by a stipulation, signed by the parties or by their counsel, setting forth the terms of the settlement as to each such issue (including the amount of tax involved). A stipulation of settlement shall be binding upon the parties unless otherwise permitted by the Court or agreed upon by those parties.

As noted, we will direct the Clerk to recharacterize the Stipulated Decision as a Stipulation of Settled Issues. This cures the defect, as respondent has fully conceded this case.

Second, we find that the Declaration of Joseph E. Mudd fails to satisfy Rule 231(d), which provides:

A motion for an award of reasonable litigation or administrative costs shall be accompanied by a detailed affidavit or declaration by the moving party or counsel for the moving party which sets forth distinctly the nature and amount of each item of costs for which an award is claimed.

The Declaration provides: “The total time spent by counsel relative to representation of both Husband and Wife Petitioners is 231.15 hours to and through trial preparation twice, to research treaties, and taxation of foreign sourced income and ultimately settlement.” The Declaration also provides that out-of-pocket costs of \$1,661.94 were expended for “Online computer research”. However, the Declaration does not describe the specific nature of the work Mr. Mudd performed, the number of hours he worked on each matter for each petitioner, or the date such work was performed. See, e.g., Malowney v. Commissioner, T.C. Memo. 2006-135. We therefore find it lacks the specificity required by Rule 231(d) and will direct petitioner to file a supplemental declaration addressing the aforementioned deficiencies.³

The foregoing considered, it is

ORDERED that the Stipulated Decision entered on December 20, 2018, is hereby vacated and set aside. It is further

ORDERED that the Clerk of the Court shall recharacterize the Stipulated Decision, entered on December 20, 2018, as a Stipulation of Settled Issues. It is further

³Additionally, we note that “[i]n determining the amount of an attorney fee award, courts customarily require the applicant to produce contemporaneous billing records or other sufficient documentation so that the district court can fulfill its duty to examine the application for noncompensable hours.” Bode v. United States, 919 F.2d 1044, 1047 (5th Cir. 1990) (collecting cases).

ORDERED that, on or before April 8, 2019, petitioner shall file a supplemental affidavit or declaration in support of costs claimed that fully complies with Rule 231(d). It is further

ORDERED that, notwithstanding the provisions of Rule 232(b), on or before June 10, 2019, respondent shall file a written response to petitioners' Motion for Reasonable Litigation or Administrative Costs, as supplemented.

(Signed) Joseph H. Gale
Judge

Dated: Washington, D.C.
February 14, 2019