

**UNITED STATES TAX COURT  
WASHINGTON, DC 20217**

VICTOR MAURICE BROWN & )  
KIMBERLY DENISE BROWN, )  
 )  
Petitioners, )  
 )  
v. ) Docket No. 20102-17.  
 )  
COMMISSIONER OF INTERNAL REVENUE, )  
 )  
Respondent )

**ORDER & DECISION**

Now before the Court are the Commissioner’s motions for entry of decision (Doc. 35) and to quash a subpoena (Doc. 38) and petitioners’ motion for an order to show cause under Rule 91(f) (Doc. 40). We will grant the Commissioner’s motions and deny petitioners’ motion.

Background

IRS notices for tax year 2014

On September 12, 2016, the Internal Revenue Service (“IRS”) issued to Victor Maurice Brown and Kimberly Denise Brown a notice of deficiency, pursuant to section 6212 of the Internal Revenue Code (26 U.S.C.), for the year 2014. (Doc. 4, Ex. C.) The Browns did not file a petition in this Court within 90 days thereafter, pursuant to section 6213(a).

On January 30, 2017, the IRS issued to the Browns, pursuant to section 6330(a)(1), a “Notice of intent to levy and notice of your right to a hearing”. (Doc. 4, Ex. A.) The Browns did not file a petition in this Court within 30 days thereafter, pursuant to section 6330(d)(1).

On September 18, 2017, the IRS issued to the Browns, pursuant to section 6331(d), a “Notice of Intent to seize (levy) your property or rights to property” for the year 2014. (Doc. 1, Ex. B.) Such a notice cannot support jurisdiction in a CDP case under section 6330(d)(1).

### IRS notice for tax year 2015

On June 26, 2017, the Internal Revenue Service (“IRS”) issued to Victor Maurice Brown and Kimberly Denise Brown a notice of deficiency, pursuant to section 6212 of the Internal Revenue Code (26 U.S.C.), for the year 2015. (Doc. 1, Ex. A.) The notice reflected a determination of a deficiency of tax of \$3,728, resulting from allegedly unreported income from sales of securities.

### The Browns’ petition

On Monday, September 25, 2017, the Browns filed a petition in this Court, to which they attached the June 2017 notice of deficiency for tax year 2015 and the “Notice of intent to levy and notice of your right to a hearing” and the September 2017 “Notice of Intent to seize (levy) your property or rights to property” for the year 2014. For the years at issue, the petition stated “Deficiency-2015; Determination-2014”.

The narrative of the petition (Doc. 1, Ex. D) includes a paragraph 13, which states assignments of error as to the income from sales of securities in 2015. Paragraph 15 alleges errors in Ms. Brown’s employer’s reporting of her 2014 compensation. Paragraphs 16 to 33 largely elaborate on her dispute with her employer.

Paragraph 34 of the petition is the “prayer for relief”, and it asks for:

- (a) “punitive damages for emotional distress”, evidently from Ms. Brown’s former employer, resulting from its filing of false documents with the IRS;
- (b) “punitive damages for emotional distress”, evidently from Ms. Brown’s former employer, as “redress for undetectable torts”;
- (c) “compensatory damages” from Ms. Brown’s former employer;

(d) “That the court grant the Browns a withdrawal of the 2014 tax year lien”;

(e) “an increase in the recovery limit due to the unauthorized collection activities in connection with the collection of Kimberly Brown’s federal tax by way of unauthorized W-4 Withholding changes”;

(f) “filling [filing] fees for amended tax returns for tax year 2014 and tax year 2015”;

(g) “a jury trial”;

(h) “all other relief the court deems just and proper”; and

(i) “temporary, preliminary and permanent injunctive relief prohibiting further malicious and deceitful conduct”.

The Browns have never filed an amended petition, nor any motion for leave to amend their petition.

#### Dismissal of 2014

The Commissioner filed a motion to dismiss the year 2014 from this case. (Doc. 4.) By order dated February 28, 2018 (Doc. 17), we held that the Browns’ petition was not timely filed as to their 2014 notice of deficiency and that “no notice of determination sufficient to confer jurisdiction on this Court has been sent to petitioners with respect to tax year 2014”. We granted the Commissioner’s motion, and we ordered that “so much of this case relating to taxable year 2014 is dismissed for lack of jurisdiction and deemed stricken from the record. Petitioners are reminded that so much of this case as relates to taxable year 2015 remains pending before the Court.”

#### The Browns’ subpoena

On December 3, 2018, we served notice (Doc. 25) that this case will be tried at the Court’s session in Atlanta, Georgia, beginning on April 29, 2019. The notice indicates the location of our Atlanta courtroom.

Using Tax Court Form 14, the Browns filled out a subpoena duces tecum dated February 12, 2019 (Doc. 38, Ex. A), which they sent to respondent’s counsel.

The subpoena asks for various documents related to tax years 2014 and 2015. The subpoena directs that the documents be produced not on April 29 (the date of the trial session) but on March 15, and not at our courtroom but at the office of respondent's counsel. A letter that the Browns attached to the subpoena indicates that the Browns did not include the fees and mileage required by Rule 148.

On March 8, 2019, the Commissioner filed a motion (Doc. 38) to quash the subpoena.

#### The Commissioner's motion for entry of decision as to 2015

On February 28, 2019, the Commissioner filed a motion (Doc. 35) for entry of a decision in favor of the Browns for 2015, the year remaining in the case. The Commissioner asks us to enter a decision "there is no deficiency in income tax due from, nor overpayment due to, petitioners for their 2015 tax year." The motion alleges that "[i]n April 2018, respondent's Appeals Office agreed to concede all issues asserted on the 2015 notice of deficiency. Petitioners refused to accept this concession". The motion states that "Petitioners object to the granting of this motion".

By order of February 28, 2019 (Doc. 36), we--

ORDERED that, no later than March 15, 2019, the Browns shall file a response to the Commissioner's motion. If they do indeed object, then their response shall begin with a succinct statement of the decision that they believe the Court should enter in this case, and a succinct description of the issues that, notwithstanding the Commissioner's announced concession, are within this Court's jurisdiction and remain to be resolved.

On March 18, 2019, the Court received the Browns' response (Doc. 42). The Browns argue that the Commissioner's motion attempts to "circumvent[] the proper judicial review of the matters at issue". They call these "new matters" and contend that they include their contentions (1) that in issuing the notice of deficiency, the IRS "proceeded in bad faith against the petitioners", (2) that "the Court's review of the evidence relative to tax year 2014, will demonstrate a systemic year-over-year pattern of fraudulent misstatements and other inaccuracies", (3) that "pursuant to the Federal Rules of Civil Procedure Rule 19, by order of this Court, the Court shall order AT&T be made a party to this case as a defendant", (4) that the IRS failed to "develop[] the facts supporting its position before it issue[d] a notice of deficiency", (5) that the burden of proof is on the IRS

in this case, pursuant to section 7491(a) and Rule 142(a), (6) that the notice of deficiency “lacked a factual relationship to the petitioners’ liability”, (7) that the IRS has committed “fraud on the Court” and has taken positions it knew to be false, (8) that for various reasons the determinations in the notice of deficiency are incorrect, so that the Browns do not owe the tax asserted, and (9) that the IRS has “engaged in unauthorized collection activities”. (The response does not assert any overpayment for 2015 nor any claim under Rule 230 and section 7430.)

### The Browns’ motion to show cause

On March 14, 2019, we received from the Browns a “Motion to Show Cause Why Proposed Facts in Evidence Should Not Be Accepted as Established” (Doc. 40), filed pursuant to Rule 91(f) and dated March 12, 2019.

The “Proposed Stipulation of Facts” accompanying the motion includes a preamble that gives a list of 13 “new matter” issues. The stipulation includes 152 numbered paragraphs of factual assertions (with subparagraphs). Some of the issues and many of the allegations in the proposed stipulation relate to the Browns’ 2014 tax year.

### Discussion

The Tax Court has only the jurisdiction that Congress has given it. See section 7442. In this case, we have jurisdiction only to redetermine the Browns’ income tax deficiency for 2015. None of the relief that they expressly request in their petition is within the Tax Court’s jurisdiction to give. That is:

We do not have jurisdiction to adjudicate any disputes between the Ms. Brown and her former employer nor to award Ms. Brown any damages from her former employer. (Their citation in this connection to the Federal Rules of Civil Procedure is wide of the mark. The Tax Court operates under its own rules, which make no provision for ordering a third party to be a defendant.) In the absence of a timely CDP request, a notice of determination pursuant to section 6320(a)(1) or 6330(a)(1), and a timely petition challenging such a determination, we do not have jurisdiction over any contention as to IRS liens, levies, or other collection activity. We do not have jurisdiction to award fees for filing amended tax returns nor any other fees other than those that might be allowed pursuant to section 7430. In the Tax Court it is the judge who makes the findings of fact, see sec. 7459(b), and the Tax Court is not authorized to conduct jury trials. The Anti-

Injunction Act (sec. 7421) generally prohibits injunctions against the IRS, and the Browns showed no exception applicable here to that general rule.

By attaching to their petition the 2015 notice of deficiency, the Browns did properly invoke our jurisdiction to redetermine the 2015 deficiency that the IRS determined against them in. However, in view of the Commissioner's concession of that deficiency, there is nothing left for us to decide.

The Browns' response to the motion for entry of decision and their motion for an order to show cause state issues that they call "new matter"--a phrase they draw from Rule 142(a), which they believe to be issues we should decide in this case. They evidently misunderstand Rule 142(a), in which "new matter" consists of issues raised by the Commissioner beyond what the IRS asserted in the notice of deficiency. Moreover, the Browns have never moved for leave to amend their petition to add any new basis for relief. However, we cannot tell whether any of the "new matter" really is new or is instead a rehashing or elaboration of the allegations in their petition. In any event, we cannot discern in their filings any issue within our jurisdiction that relates to their 2015 tax year and that would not be resolved by our entry of a decision of zero deficiency.

Consequently, the first reason that we will grant the Commissioner's motion to quash the subpoena is that the production of further information would be moot. In addition, however, the subpoena is improper for multiple reasons--overbreadth (i.e., the inclusion of demands for 2014 information after that year was dismissed from this case), failure to proffer the witness and mileage fees required by Rule 148, and purporting to demand production other than in the courtroom at the trial session.

Also moot is the Browns' motion for an order to show cause, and we will deny it for that reason, and for the additional reason that it proposes a stipulation that is overbroad.

To give effect to the foregoing, it is

ORDERED that the Browns' motion for an order to show cause is denied. It is further

ORDERED that the Commissioner's motion to quash the subpoena is granted. It is further

ORDERED that the Commissioner's motion for entry of decision is granted. Consequently, it is further

ORDERED AND DECIDED that there is no deficiency in income tax due from, nor overpayment due to, petitioners for the taxable year 2015.

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

ENTERED: **MAR 22 2019**