

4549B, Income Tax Examination Changes, explaining the computations. The parties did not reach an agreement at that time.

The case was then calendared for trial for December 10, 2018. The Commissioner sent the Kitts a new proposed stipulation of settled issues. Before trial, both parties signed and submitted that stipulation of settled issues, and the case was not called. We gave the parties until February 8, 2019, to submit a decision based on their stipulation.

In December 2018, the Commissioner mailed the Kitts a proposed decision with accompanying computations. The Kitts did not sign the proposed decision. Instead, in February 2019, the Kitts' accountant sent the Commissioner a letter stating that the Kitts did not agree with the decision. In the letter, the Kitts claimed they "fe[lt] that they were given misrepresented information in the Stipulat[ion] of Settled Issues of November 30, 2018, mainly due to not having income tax change computations at that time."

After the Commissioner received the letter, the Court held a conference call with the parties. During that call, the Commissioner agreed to correct a computational error in the proposed decision. We instructed the parties to file motions or a decision by March 8, 2019. The Commissioner filed a motion asking us to enter a decision pursuant to the stipulation and in accordance with his corrected proposed decision. The Kitts filed a motion to be relieved of the stipulation.

In their motion, the Kitts contend "the [Commissioner] misrepresented the stipulation of settled issues based on the final computations" and ask us to either "uphold the calculations submitted to the court as exhibit 'A'" or "send both Parties back to trial and possible negotiations before the trial commences". The Kitts disagree with the Commissioner's computations because the Commissioner (1) "did not use ...exhibit (A) from the IRS form 4549 B[] in the computations", (2) refused to accept Schedule E deductions "for 2013 and 2014 for management fees and/or commissions and payments", (3) did not "disclose that [the Commissioner was] not accepting the most recent 4549B", (4) "did not follow [the IRS] rules of Rule 155 computations", and (5) "did not follow the Department of Justice tax division settlement reference manual... by not supplying the Rule 155 computations of stipulation of settled issues to the Petitioner in a timely manner or at all before submission to the court". They do not identify any error in the stipulation.

Analysis

The issue before this Court is whether we should grant the Commissioner's motion for entry of decision or grant the Kitts' motion to be relieved from the stipulation. Pursuant to Rule 91(e), we treat a stipulation as a conclusive admission by the parties unless justice requires relief from the binding effect of the stipulation. In general, we use our broad discretion to permit relief from a stipulation only when necessary to prevent "manifest injustice".²

The Kitts argue for relief based on their claim that the Commissioner misrepresented the stipulation terms. We recognize "[e]xcusable damaging reliance upon a false or untrue representation of the other party, even one innocently made" as a ground for relief from a stipulation.³ In contrast, a unilateral mistake in a binding, unambiguous stipulation is not a ground for relief.⁴

The Kitts did not provide any basis to support their claim of misrepresentation. The Kitts may have misunderstood the tax effect of their stipulation, but that unilateral mistake (assuming there was one) is not grounds to set aside the stipulation.

A stipulation of settled issues is a compromise,⁵ and we are unlikely to grant relief from a stipulation entered into through considerable negotiation.⁶ The Kitts had the Form 4549B from the Commissioner's initial settlement offer since at least April 2018. The Kitts were represented by their accountant who also had the Form 4549B before they entered into the stipulation. The parties freely and fairly signed the stipulation long after both parties were aware of what was at issue.⁷

²Bokum v. Commissioner, 992 F.2d 1132, 1136 (11th Cir. 1993), aff'g, 94 T.C. 126 (1990).

³Saigh v. Commissioner, 26 T.C. 171, 180 (1956).

⁴Stamm Int'l Corp. v. Commissioner, 90 T.C. 315, 320-321 (1988).

⁵See Saigh v. Commissioner, 26 T.C. at 177; Clark v. Commissioner, T.C. Memo. 2008-279, 96 T.C.M. 448, 449.

⁶See Saigh v. Commissioner, 26 T.C. at 179; Lovenguth v. Commissioner, 93 T.C.M. (CCH) at 1042.

⁷See Revell v. Commissioner, T.C. Memo. 2007-37, 93 T.C.M. (CCH) 913 (2007) (the taxpayers' alleged unilateral mistake in executing their stipulation was insufficient ground to set it aside, especially because they were represented by counsel and the signing occurred on the eve of the trial).

The Kitts contend the Commissioner did not follow either the IRS's internal rules for handling Rule 155 computations or the Department of Justice Tax Division Settlement Reference Manual by failing to timely supply the Rule 155 computations. Even if true, these contentions are irrelevant. First, the Internal Revenue Manual does not give rise to enforceable rights.⁸ Moreover, Rule 155 does not apply to the situation at hand; it applies to computing decisions following an opinion of the Court. Regarding the DOJ Tax Division Settlement Reference Manual, neither the Commissioner nor the Tax Court are bound by it.

The parties already had their opportunity to negotiate or go to trial. They chose to forgo trial by submitting a stipulation resolving all issues in this case. The Kitts do not dispute their stipulation; instead they dispute the resulting calculation. Manifest injustice will not result from the enforcement of the parties' stipulation. Accordingly, it is

ORDERED that the Commissioner's motion for entry of decision filed March 8, 2019, is granted. It is further

ORDERED that the Kitts' motion to be relieved of stipulation filed March 8, 2019, is denied. It is further

ORDERED AND DECIDED: That there are deficiencies in income tax due from petitioners for the taxable years 2013 and 2014 in the amounts of \$17,086.00 and \$2,277.00, respectively; and

That there is a penalty due from petitioners for the taxable years 2013 and 2014 in the amounts of \$3,417.20 and \$455.40, respectively, under the provisions of I.R.C. § 6662(a).

(Signed) Ronald L. Buch
Judge

Entered: **MAY 17 2019**

⁸ Thompson v. Commissioner, 140 T.C. 179, 190 n.16 (2013).