

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SANFORD M. KIRSHENBAUM &)	
SALLY KIRSHENBAUM,)	
)	CZ
Petitioners,)	
)	
v.)	Docket No. 10135-17S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This case is before the Court on the Commissioner’s motion (Doc. 20) for entry of decision consistent with the parties’ Stipulation of Settlement (Doc. 14). Petitioners Sanford M. and Sally Kirshenbaum object to the motion. (See Docs. 22, 23.) We will grant the Commissioner’s motion.

BACKGROUND

In February 2015, the Kirshenbaums filed late their 2014 return, which had been due in April 2015. (See Doc. 26, attachment.)

Retirement income of Mrs. Kirshenbaum

On line 16 (“Pensions and annuities”) they reported a total amount of \$33,345.36 on line 16a and a “Taxable amount” of \$32,702.40.

These amounts are consistent with a Form 1099-R submitted as to Mrs. Kirshenbaum by the State of Rhode Island Employees Retirement System. The IRS made no adjustment as to this income amount.

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Disputed Jones income of Mr. Kirshenbaum

On line 15 (“IRA distributions”) the Kirshenbaums reported \$10,000 both on line 15a and as the “Taxable amount” on line 15b. They acknowledge (see Doc. 23 that this amount derives from a retirement account maintained for Mr. Kirshenbaum by Edward D. Jones & Co. (“Jones”). Jones issued a Form 1099-R as to an account (with a number ending -5117) in the name of Mr. Kirshenbaum, showing a “Gross distribution” of \$43,006 and a “Taxable Amount” of \$43,006. (See Doc. 24, attachment.) But again, on their return the Kirshenbaums reported not this \$43,006 amount but only \$10,000.

Jones income of Mrs. Kirshenbaum

Jones also issued a Form 1099-R as to an account (with a number ending -7305) in the name of Mrs. Kirshenbaum, showing a “Gross distribution” of \$5,000 and a “Taxable Amount” of \$5,000. (The Kirshenbaums did not report this amount on their 2014 return and have made no mention of it in their filings in this case.)

Social Security income

On their 2014 return (Doc. 23, attachment) the Kirshenbaums reported Social Security benefits in a gross amount of \$38,109.60 on line 20a and a “Taxable amount” of \$5,590 on line 20b. (The IRS does not dispute the gross amount but, as is explained below, has recomputed the taxable amount in accordance with its revision of the Kirshenbaums’ income. See Doc. 24.)

Medical expenses

On Schedule A (“Itemized deductions”) to their 2014 return, the Kirshenbaums reported medical expenses in the gross amount of \$26,728.90 on line 1 and (after computing the pertinent limit) a deductible amount of \$23,490.28 on line 4. (The IRS does not dispute the gross amount but, as is explained below, has recomputed the limit in accordance with its revision of the Kirshenbaums’ income. See Doc. 24, Ex. C.)

Apparent mathematical corrections

The IRS received and processed the Kirshenbaums’ 2014 tax return. An IRS transcript of that return (Doc 24, Ex. A) indicates that, when processing the return, the IRS made a mathematical correction (presumably pursuant to

section 6213(b)(1)) of the taxable portion of the Kirshenbaums' Social Security Benefits, which should have been not \$5,590 (as the Kirshenbaums had figured) but rather \$16,749, according to the IRS's computer.

The same transcript indicates that the IRS also made a mathematical correction of the deductible portion of the Kirshenbaums' medical expenses, which should have been not \$23,490 (as the Kirshenbaums had figured) but rather \$22,653, according to the IRS's computer.

The IRS's SNOD

The IRS thereafter examined the Kirshenbaums' 2014 return and, in February 2017, issued a statutory notice of deficiency ("SNOD"; Doc. 3, attachment), adjusting their income in the amount of \$43,006 derived from Jones. (The Commissioner now acknowledges that the amount should be only \$38,006.)

In view of the revised income amounts, the SNOD also recomputed the taxable portion of the Kirshenbaums' Social Security benefits (increasing it above the previous mathematical correction by an additional \$15,644 to a new total of \$32,393) and the deductible portion of their medical expenses (decreasing it below the previous mathematical correction by an additional \$4,398 to a new total of \$18,254).

The SNOD determined a tax deficiency of \$8,906 and also imposed (1) a 20% substantial underpayment penalty pursuant to section 6662(a) and (2) a failure-to-file addition to tax of \$1,698 pursuant to section 6651(a)(1).

Tax Court petition and trial setting

The Kirshenbaums challenged the SNOD by filing a petition in this Court in May 2017. In November 2017 the Commissioner's attorney sent the Kirshenbaums a letter (Doc. 24, Ex. A), explaining that he had recomputed their unreported income to be \$38,006 (rather than the \$43,006 in the SNOD). It appears that this recomputed amount of unreported income effectively consists of Mr. Kirshenbaum's Jones income of \$43,006 plus Mrs. Kirshenbaum's Jones income of \$5,000, minus the \$10,000 that they reported on line 15b.

Their case was set for trial in March 2018 (see Doc. 4), but the Kirshenbaums requested a continuance (Doc. 6), which the Court granted

(Doc. 10). The case was next set for trial at the Court's Boston session beginning March 11, 2019 (see Doc. 12).

“Stipulation of Settlement”

On March 1, 2019, the Commissioner's attorney sent the Kirshenbaums a letter (Doc. 24, Ex. B) proposing that they sign a “Stipulation of Settlement” consistent with the Commissioner's previous letter of November 2017. The March 1 letter stated:

Attached to this letter are three copies of a Stipulation of Settlement reflecting the terms we discussed on our last call, and resolving all issues in this matter. Please review the document thoroughly, and if you agree, please sign all three copies provided and return two copies to me in the mail as soon as possible (the last one is for your records).

The attached proposed Stipulation of Settlement provided as follows:

1. The parties stipulate that Petitioners received and failed to report taxable retirement income in the amount of \$38,006.00 from Edward D. Jones and Company, Retirement Operations, in the tax year 2014.
2. The parties further stipulate that Petitioners' taxable social security income for the tax year 2014 will be recomputed based on the foregoing.
3. The parties further stipulate that Petitioners' allowable medical deductions for the tax year 2014 will be recomputed based on the foregoing.
4. The parties further stipulate that Petitioners' allowable Schedule A deductions for the tax year 2014 will be recomputed based on the foregoing.
5. The parties further stipulate that Petitioners are not liable for an accuracy-related penalty under I.R.C. § 6662(a) for the tax year 2014.

6. The parties further stipulate that Petitioners are liable for the I.R.C. § 6651(a)(1) addition-to-tax for the tax year 2014.

7. The parties further stipulate that the I.R.C. § 6651(a)(1) addition-to-tax for the tax year 2014 will be recomputed based on the foregoing.

8. The parties further stipulate that the terms of this Stipulation of Settlement resolve all issues in this case and will be incorporated in a decision to be executed by the parties and entered by the Court in this case.

Each of the Kirshenbaums signed the “Stipulation of Settlement”, and it was filed March 8, 2019. (Doc. 14.) That stipulation resolves the issues in the case but does not reflect a recomputation of the deficiency amount for purposes of the entry of decision. Rather, that recomputation remained to be done.

The Kirshenbaums did not appear at the Court’s trial session on March 11, 2019, and their case was not called. Rather, the Court took note of the “Stipulation of Settlement” and directed the parties to file a stipulated decision document after they had agreed on the recomputation. (See Doc. 16.)

Proposed decision document

The Commissioner undertook to perform the recomputation. On March 26, 2019, the Commissioner sent a letter (Doc. 24, Ex. C) transmitting a proposed decision document that stated a 2014 deficiency amount of \$8,103 (rather than \$8,906 as in the SNOD). With the letter was an explanatory computation that showed: an increase in their retirement income of \$38,006 (pursuant to the “Stipulation of Settlement”); a recomputed taxable portion of the Kirshenbaums’ Social Security benefits (increased, as in the SNOD, by an additional \$15,644 to a total of \$32,393); and a recomputed deductible portion of their medical expenses, decreased by \$4,024.33 to \$18,628.68 (rather than, as in the SNOD, by an additional \$4,398 to a total of \$18,254). The computation also reflected a failure-to-file addition to tax in the amount of \$1,497.29 pursuant to section 6651(a)(1) (rather than \$1,698 as in the SNOD), and “no penalty ... under the provisions of I.R.C. § 6662(a)”.

Motion for entry of decision

No stipulated decision document has ever been filed. Rather, on May 31, 2019, the Commissioner filed a motion for entry of decision (Doc. 20) in an amount that was justified by his unilateral recomputation attached to the motion. That recomputation, consistent with the “Stipulation of Settlement”, was the same one that accompanied the Commissioner’s proposed decision document as explained in the letter of March 26, 2019 (Doc. 24, Ex. C).

Petitioners’ opposition

The Kirshenbaums oppose the motion (Docs. 22, 23) and dispute the correctness of the Commissioner’s proposed decision:

Without explanation or substantiation, they assert (Doc. 23) that Mrs. Kirshenbaum’s pension income was \$31,059.74 “after tax” (rather than the taxable amount of \$32,702.40 that Rhode Island reported, that the Kirshenbaums reported on their return, and that the IRS accepted), and they make no mention of Mrs. Kirshenbaum’s \$5,000 income from Jones.

Initially (see Doc. 22), the Kirshenbaums “agree[d] that the amount reported on the return should be increased” (but only to the unexplained amount of \$29,006). In their second filing (see Doc. 23) they admit that Mr. Kirshenbaum received a total of \$43,006 from Jones, but they contend that only \$10,000 was taxable and that--

The balance of 33006 consists of the amount invested in an account that was not producing enough income, so we cancelled it.

This balance of 33006 is the amount received from the investment. It is not additional income. The money received was previously earned & from which taxes were previously paid.

They assert that (but do not explain why) their adjusted gross income and their deductions are as claimed on their original return, and that the failure-to-file “penalty of 1497.29 ... should be deducted” (Doc. 23)--making no mention of their “Stipulation of Settlement” that provided otherwise.

DISCUSSION

More than two years ago, in May 2017, the Kirshenbaums commenced this case by filing their petition, challenging the IRS's SNOD. Their case was set for trial in March 2018; but for their benefit, the case was continued. This gave them substantial additional time to prepare their case. The case was then set for trial a year later in March 2019.

That March 2019 trial was to be their opportunity to prove any error in the IRS's SNOD. If income adjusted on the SNOD was not really paid to them or was not taxable, then the trial was their opportunity to so demonstrate. If any deductions were wrongly disallowed, then the trial was their opportunity to so demonstrate. If their return was not untimely (or if they had reasonable cause for the untimeliness), then the trial was their opportunity to so demonstrate.

However, before the trial session began, the Kirshenbaums signed a "Stipulation of Settlement" resolving all the issues in this case. In that document the Kirshenbaums agreed that they had "failed to report taxable retirement income in the amount of \$38,006.00", that their income from Social Security benefits and their medical expense deductions would be "recomputed", and that they would be "liable for the I.R.C. § 6651(a)(1) addition-to-tax" for failure to timely file their return (but not for the accuracy-related penalty of section 6662(a)). By thus settling the issues in the case, the Kirshenbaums avoided having their case dismissed for their failure to appear at the trial session.

But when the time came to prepare (as they had agreed) "a decision to be executed by the parties and entered by the Court in this case", they attempted to backtrack and dispute matters that they had resolved. We will not honor that attempt. They entered into an agreement, and we will hold them to their word.

Our decision to do so is fortified by the fact that the Kirshenbaums have made no showing that they have any serious dispute to maintain about the matters in the SNOD. The principal issue is the \$38,006 portion of the Jones retirement income that they agreed they "failed to report". They do not dispute that they received it; and they do not explain how a very round \$10,000 happened to be the only taxable portion. They do not dispute that Jones, the payor, reported the entire amount as taxable. Under section 6201(d) the IRS would have been entitled to rely on Jones's report at trial unless the Kirshenbaums presented a "reasonable dispute" after "fully cooperat[ing]" with the IRS. If they intended to prove that this taxable characterization was a mistake and that only \$10,000 of the payout was taxable,

then it was incumbent on them to do so at trial, after cooperating with the IRS in sharing their proof as they prepared the case for trial. But they decided to forego trial and to enter into a settlement instead.

The Kirshenbaums do not point to any mathematical or other error in the Commissioner's computation of the corrected liability, and we discern no error. The amounts the Commissioner proposes correctly implement the agreement into which the Kirshenbaums entered. It is therefore

ORDERED that the Commissioner's motion for entry of decision is granted. It is further

ORDERED AND DECIDED: That there is a deficiency in income tax due from Petitioners for the tax year 2014 in the amount of \$8,103.00;

That there is an addition-to-tax due from Petitioners for the tax year 2014, under the provisions of I.R.C. § 6651(a)(1) for failure to timely file the return, in the amount of \$1,497.29; and

That there is no penalty due from Petitioners for the tax year 2014, under the provisions of I.R.C. § 6662(a).

**(Signed) David Gustafson
Judge**

ENTERED: **JUL 16 2019**