

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ALBERT CARNESALE &)
ROBIN CARNESALE,)
)
Petitioners,) **CT**
)
v.) Docket No. 25757-18S.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)
)

ORDER

On August 26, 2019, respondent filed a motion to dismiss for lack of jurisdiction on the ground that the notice of deficiency underlying this action is invalid because petitioners paid the tax liability before the notice of deficiency was issued to them. On September 10, 2019, at the direction of the Court, respondent filed a supplement to his motion to dismiss and produced a copy of a letter that petitioners’ accountant sent to the IRS along with payment of the tax liability in question. This case was called and recalled for hearing in Los Angeles, California, on September 23 and 25, 2019.

Background

On June 25, 2018, respondent mailed to petitioners a Notice CP2000 proposing that they owed additional tax of \$23,171 for the taxable year 2016, an accuracy-related penalty under section 6662(a) of \$4,220, and interest of \$1,120, offset by a credit of \$2,070.¹ On July 20, 2018, petitioners’ accountant sent a letter to the IRS, along with a check in the full amount of the proposed tax liability, stating in relevant part: “[Petitioners] received the IRS notice CP2000 * * *. We agree with the changes of the tax liabilities. However, we would like to request that [the IRS] waive the penalty being assessed. * * * Payment for [the tax due] is enclosed with this letter in order to remedy the situation expeditiously.”

¹ Section references are to sections of the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

On December 3, 2018, respondent mailed a notice of deficiency to petitioners determining a deficiency in their Federal income tax for the taxable year 2016 and an accuracy-related penalty in the same amounts proposed in the Notice CP2000. Petitioners filed a timely petition for redetermination with the Court challenging the above-described notice of deficiency. Petitioners clearly state in the petition that they do not challenge the deficiency in tax, but do contest the accuracy-related penalty.

Discussion

Respondent maintains that petitioners' remittance on July 20, 2018, should be treated as a payment of tax instead of a deposit because petitioners failed to follow the procedures provided in Rev. Proc. 2005-18, 2005-1 C.B. 798, to properly designate their remittance as a deposit.

The Court's jurisdiction to redetermine a deficiency depends upon the issuance of a valid notice of deficiency and timely filed petition. Monge v. Commissioner, 93 T.C. 22, 27 (1989); Rule 13(a), (c). "[I]t is not the existence of a deficiency but the Commissioner's determination of a deficiency that provides a predicate for Tax Court jurisdiction." Hannan v. Commissioner, 52 T.C. 787, 791 (1969).

Respondent attached to his motion to dismiss a transcript of petitioners' account for 2016 which shows that on July 30, 2018, the IRS recorded petitioners' remittance as "Advance payment of tax owed". No assessments were entered, however, for the tax, penalty, or interest proposed in the Notice CP2000, which left a credit balance in petitioners' account. Contrary to the procedures established in Rev. Proc. 2005-18, supra, upon which respondent relies, petitioners' remittance was not offset by a corresponding assessment of additional tax to which the "payment" relates. See sec. 6213(b)(4).

On this record, the Court concludes that respondent treated petitioners' remittance as a deposit, not as a payment, and respondent did not assess additional tax equal to the amount of the remittance before issuing the notice of deficiency. See Hyde v. Commissioner, T.C. Memo. 2011-131; c.f. sec. 6213(b)(4).

Upon due consideration and for cause, it is

ORDERED that respondent's motion to dismiss for lack of jurisdiction, as supplemented, is denied. It is further

ORDERED that petitioners' address on the Court's records is changed to 10727 Wilshire Boulevard, Apt. 1201, Los Angeles, California, 90024-4423.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

Dated: Washington, D.C.
September 30, 2019