

UNITED STATES TAX COURT
WASHINGTON, DC 20217

RAJAN R. KAMATH,)
)
Petitioner,) **CT**
)
v.) Docket No. 5307-19S.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On June 10, 2019, respondent filed a Motion to Dismiss for Lack of Jurisdiction in this case on the ground that the notice of deficiency issued to petitioner is invalid because no “deficiency” was determined as required by various sections of the Internal Revenue Code.¹ On June 21, 2019, petitioner filed a Response to Motion to Dismiss for Lack of Jurisdiction opposing respondent’s motion. On August 15, 2019, respondent filed a Response to Response to Motion to Dismiss for Lack of Jurisdiction. As discussed in detail below, we will grant respondent’s motion to dismiss.

Background²

Petitioner failed to file timely Federal income tax returns for the taxable years 2011, 2012, 2013, and 2015 (years in issue). After conducting an audit, respondent prepared substitutes for returns under section 6020(b) and mailed to petitioner 30-day letters proposing income tax deficiencies for the years in issue. On March 26, 2018, petitioner submitted to respondent delinquent tax returns for the years in issue. Respondent processed those tax returns and assessed the tax

¹Section references are to sections of the Internal Revenue Code (Code), as amended and in effect for the years in issue, and Rule references are to the Tax Court Rules of Practice and Procedure.

²The following background facts are either not disputed or are otherwise reflected in the record of this case.

liabilities reported on the returns. See sec. 6201(a)(1). Respondent also assessed additions to tax under section 6651(a)(2).

On December 14, 2018, respondent issued to petitioner a notice of deficiency for the taxable years 2011, 2012, 2013, and 2015. In the notice, respondent determined no deficiencies in petitioner's Federal income tax, but determined that he is liable for the following additions to tax computed by reference to the taxes shown by petitioner on his delinquent tax returns: section 6651(a)(1) (late filing) for each of the years in issue, section 6651(a)(2) (late payment) for the taxable years 2013 and 2015, and section 6654 (failure to pay estimated tax) for the taxable years 2012, 2013, and 2015. The Court subsequently received and filed a timely petition for redetermination challenging the above-described notice of deficiency.

Discussion

The Tax Court is a court of limited jurisdiction, and we may exercise our jurisdiction only to the extent authorized by Congress. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). The Court's jurisdiction to redetermine a deficiency depends upon the issuance of a valid notice of deficiency and a timely-filed petition. Rule 13(a), (c); Monge v. Commissioner, 93 T.C. 22, 27 (1989); Normac, Inc. v. Commissioner, 90 T.C. 142, 147 (1988).

Section 6212(a) expressly authorizes the Commissioner, after determining a deficiency, to send a notice of deficiency to the taxpayer. The question presented here is whether respondent determined a "deficiency" within the meaning of the Code.

Section 6211(a) defines the term "deficiency" as the amount by which the tax imposed by subtitle A and B, or chapters 41 to 44 of the Code exceeds the excess of the sum of the amount shown as the tax by a taxpayer on the taxpayer's return plus the amounts previously assessed as a deficiency, over the amount of rebates made. Section 6665(a) in turn states the general rule that additions to tax are treated as "tax" for purposes of assessment and collection. However, section 6665(b) provides an exception to the general rule as follows:

(b) Procedure for assessing certain additions to tax.--For purposes of subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes), subsection (a) shall not

apply to any addition to tax under section 6651, 6654, or 6655; except that it shall apply--

- (1) in the case of an addition described in section 6651, to that portion of such addition which is attributable to a deficiency in tax described in section 6211; or
- (2) to an addition described in section 6654 or 6655, if no return is filed for the taxable year.

As outlined above, petitioner filed delinquent Federal income tax returns for the years in issue and reported the underlying tax liabilities that respondent summarily assessed pursuant to section 6201(a)(1). The tax liabilities that petitioner reported on his tax returns do not constitute income tax deficiencies within the meaning of section 6211(a). See Meyer v. Commissioner, 97 T.C. 555, 559-560 (1991) (summary assessments of tax under section 6201(a)(1) are not “deficiencies” subject to the Court’s jurisdiction).

Consistent with section 6665(b), the additions to tax listed in the notice of deficiency in this case are not treated as “tax” subject to the Court’s jurisdiction. As explained above, the additions to tax under section 6651 are not attributable to a “deficiency in tax described in section 6211”. Sec. 6665(b)(1). Likewise, the additions to tax under section 6654 are not subject to the deficiency procedures because petitioner filed delinquent tax returns for the years in issue. See Wilson v. Commissioner, 118 T.C. 537, 540-541 (2002) (the Commissioner may summarily assess additions to tax under section 6654 arising from delinquent tax returns). It follows that the notice of deficiency is invalid and we are obliged to grant respondent’s motion to dismiss.

As a final matter, petitioner asserts that it is inequitable to deny him the opportunity to petition this Court. As we have previously said in similar cases: “We recognize the difficult position in which petitioners are placed by not being able to come to the Tax Court to test the validity of the respondent’s action in asserting the penalty. Nevertheless, that is the law and we must take it as we find it.” Wilson v. Commissioner, 118 T.C. at 541 (quoting Estate of Scarangella v. Commissioner, 60 T.C. 184, 186-187 (1973)).

Upon due consideration and for cause, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction, filed June 10, 2019, is granted and this case is dismissed for lack of jurisdiction on the ground that the notice of deficiency underlying this action is invalid.

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

ENTERED: **OCT 01 2019**