

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

PAUL EDWIN JOHNSON &	)	
SUSAN H. JOHNSON,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 14429-18.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER AND ORDER AND DECISION**

This matter is before the Court on petitioner Paul Edwin Johnson's motion for an award of reasonable litigation costs filed pursuant to section 7430 and Rules 230 through 233.<sup>1</sup> As discussed in the detail below, the Court will deny petitioner's motion.

**Background**

Petitioners, husband and wife, filed a timely joint Federal income tax return for the taxable year 2015 (year in issue). They reported, in pertinent part, gross distributions of \$141,793 and \$45,188 from an individual retirement account (IRA) and a pension account, respectively, a rollover contribution of the full amount of the IRA distribution, and taxable income of \$41,827 in connection with the pension distribution.

The Internal Revenue Service (IRS) received the following information related to Mr. Johnson's IRA and pension distributions during the year in issue: (1) a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., from Northern Trust Company (Northern Trust), reporting that Mr. Johnson received a gross distribution of

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<sup>1</sup>Unless otherwise specified, sections references are to the Internal Revenue Code, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

\$45,188 and taxable income of \$44,827, and had tax withholding of \$3,912; (2) a Form 1099-R from Riversource Life Insurance Company (Riversource) reporting that Mr. Johnson received a gross distribution of \$141,793 and taxable income of \$141,793, and had tax withholding of \$2,056; and (3) a Form 1099-R from Equity Trust Company (ETC) reporting that Mr. Johnson received a gross distribution of \$20,000 and taxable income of \$20,000. In addition, ETC reported on Form 5498, IRA Contribution Information, that Mr. Johnson made a rollover contribution of \$141,233 to an IRA during the taxable year 2015.

The Forms 1099-R and Form 5498 described above did not identify the dates that the distributions were made to Mr. Johnson or the date that he made the rollover contribution. Although petitioners had attached the Forms 1099-R issued by Northern Trust and Riversource to their tax return, they did not attach the Form 1099-R or Form 5498 issued by ETC.

The IRS sent a Notice CP2501 dated May 15, 2017, to petitioners informing them that their 2015 tax return did not match information reported to the IRS and requesting additional information or documentation from them addressing the discrepancies.

On August 8, 2017, petitioners sent a letter to the IRS requesting documents related to the Notice CP2501. They did not provide the IRS with any documents related to the rollover contribution or the ETC distribution.

On August 14, 2017, the IRS issued to petitioners a Notice CP2000 proposing changes to their 2015 tax liability including additional tax of \$40,429, an accuracy-related penalty of \$8,086, and interest of \$2,818. The IRS proposed to increase petitioners' taxable income to include a \$20,000 taxable distribution from ETC and a \$141,793 IRA distribution from Riversource.

On October 17, 2017, petitioners sent a letter to the IRS alleging that Mr. Johnson received a retirement distribution of \$141,000 during the year in issue and that he deposited that same amount into another retirement account. Petitioners did not provide any documentation related to the rollover contribution or the ETC distribution.

On April 23, 2018, the IRS issued a notice of deficiency to petitioners for the year in issue determining the same adjustments that had been proposed in the Notice CP2000 summarized above. On May 20, 2018, petitioners sent a letter to the IRS again claiming that the IRA distribution was not taxable because Mr.

Johnson made a rollover contribution in the amount of the distribution during the year in issue. They did not provide any documentation related to the rollover contribution or the ETC distribution.

Petitioners subsequently filed a timely petition for redetermination with the Court. They have represented themselves throughout these proceedings. On September 11, 2018, respondent filed an answer to the petition.

Respondent's counsel subsequently referred petitioners' case to the IRS Office of Appeals (Appeals Office) for consideration. The Appeals Office recommended that respondent settle the case with no adjustments to petitioners' tax liability. On March 15, 2019, the parties filed with the Court an agreed decision (which the Court later treated as the parties' joint stipulation of settled issues) resolving all issues in petitioners' favor.

On March 29, 2019, Mr. Johnson filed a motion for reasonable litigation costs seeking an award of \$13,486 comprising \$71 for out of pocket expenses (postage and the Court's \$60 petition filing fee), \$3 for mileage expenses, \$3,709 for preparation and filing expenses, and \$9,703 representing a purported accuracy-related penalty.<sup>2</sup> Respondent opposes petitioner's motion.

### Discussion

A judgment for reasonable litigation costs incurred in connection with a court proceeding may be awarded if a taxpayer: (1) is the prevailing party, (2) has exhausted administrative remedies with the IRS, and (3) did not unreasonably protract the proceedings.<sup>3</sup> Sec. 7430(a), (b)(1), (3); Polz v. Commissioner, T.C. Memo. 2011-117. A taxpayer (the moving party) must satisfy each of the requirements to be entitled to an award of litigation costs under section 7430. Rule 232(e); see Minahan v. Commissioner, 88 T.C. 492, 497 (1987).

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<sup>2</sup>The majority of the expenses that Mr. Johnson claims do not constitute "reasonable litigation costs" as Congress defined that term in sec. 7430(c)(1)(A) and (B). Consequently, the Court limits its consideration to his claim for an award of \$71 (i.e., postage expenses and the Court's filing fee).

<sup>3</sup>Respondent concedes that petitioners did not unreasonably protract the proceedings. Although the parties dispute whether petitioners exhausted administrative remedies available to them, we need not resolve that question in disposing of this matter.

To be a prevailing party, the taxpayer must: (1) substantially prevail with respect to either the amount in controversy or the most significant issue or set of issues presented and (2) satisfy applicable net worth requirements.<sup>4</sup> Sec. 7430(c)(4)(A). The taxpayer will nevertheless fail to qualify as the prevailing party if the Commissioner's position in the proceeding is shown to have been substantially justified. Sec. 7430(c)(4)(B)(i). Respondent contends that his position in this case was substantially justified.

To establish that his position was substantially justified, the Commissioner must show that his position was "justified to a degree that could satisfy a reasonable person" or that his position has a "reasonable basis both in law and fact." Swanson v. Commissioner, 106 T.C. 76, 86 (1996) (quoting Pierce v. Underwood, 487 U.S. 552, 565 (1988)). The relevant question is "whether \* \* \* [the Commissioner] knew or should have known that \* \* \* [his] position was invalid at the onset." Nalle v. Commissioner, 55 F.3d 189, 191 (5th Cir. 1995), aff'g T.C. Memo. 1994-182; see sec. 301.7430-5(c)(1), Proced. & Admin. Regs. Generally, the position of the United States in the judicial proceeding is established in the answer to the petition. See, e.g., Sher v. Commissioner, 861 F.2d 131, 134-135 (5th Cir. 1988), aff'g 89 T.C. 79 (1987).

Section 61(a)(10) defines gross income as income from all sources, including pension distributions. Section 408(d)(1) provides the general rule that a distribution from an IRA account is includible the payee's gross income in the manner provided in section 72. Section 408(d)(3)(A)(i) provides an exception to the general rule of subsection (d)(1), however, if the entire amount of the distribution received by the individual for whose benefit the IRA is maintained is paid into an IRA (i.e., a rollover contribution is made) for the benefit of that individual not later than 60 days after the day on which he receives the distribution.

In this case, the IRS received third-party information that Mr. Johnson received a pension distribution from ETC and an IRA distribution of \$141,793 from Riversource, and that he made a contribution of \$141,233 to an IRA account at ETC. In the light of this information, respondent was justified in seeking clarification from Mr. Johnson on three points: (1) did he receive a \$20,000 pension distribution from ETC, (2) did he make a rollover contribution of the full

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<sup>4</sup>Respondent concedes that petitioners substantially prevailed in this action and that they meet applicable net worth requirements.

amount of the IRA distribution from Riversource, and if so, (3) did he make the rollover contribution to ETC within the 60-day period prescribed in section 408(d)(3)(A)(i). As the owner and beneficiary of these retirement accounts, and having claimed the benefit of a rollover contribution on his joint tax return, Mr. Johnson should have maintained records of these transactions and readily shared them with respondent upon request. Unfortunately, petitioners failed to provide any documentation to respondent to assist in resolving these questions, leading to the issuance of the notice of deficiency.

The Commissioner is entitled to maintain his position, for purposes of determining whether it was substantially justified, until adequate substantiation is received from the taxpayer. See Baldwin v. Commissioner, T.C. Memo. 2015-66. Where the resolution of adjustments hinges on factual determinations, the Commissioner is not required to concede the adjustments until he has received, and has had reasonable time to review, sufficient substantiation for the matter in question. See Huynh v. Commissioner, T.C. Memo. 2002-110. Because petitioners did not provide any documents, records, or other objective evidence to show that Mr. Johnson made a timely and proper rollover contribution during the year in issue, respondent's position in this case was substantially justified.

Consistent with the foregoing, and the parties' stipulation of settled issues, filed March 15, 2019, it is

ORDERED that petitioner Paul Edwin Johnson's motion for reasonable litigation costs is denied. It is further

ORDERED AND DECIDED that there is no deficiency in income tax due from petitioners for the taxable year 2015. It is further

ORDERED AND DECIDED that petitioners are not liable for a section 6662(a) penalty for the taxable year 2015.

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

ENTERED: **NOV 01 2019**