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

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| JAMES MICHAEL MATAROZZO & HEATHER RENEE BEACH, | ) | |
| Petitioners, | ) | |
| v. | ) | Docket No. 19228-14. |
| COMMISSIONER OF INTERNAL REVENUE, | ) | |
| Respondent | ) | |

# O R D E R

Now before us are petitioners' motion to vacate or revise our decision pursuant to Rule 162 (Doc. 13) and their motion to restrain collection or assessment (Doc. 15). We will deny both motions.

## Background

### SNOD and Tax Court petition

On May 13, 2014, the IRS issued to petitioners a statutory notice of deficiency ("SNOD") determining deficiencies of Federal income tax for 2010 in the amount of $124,044 and for 2011 in the amount of $126,198, plus accuracy-related penalties. Petitioners challenged that SNOD by filing a petition in this Court.

### Stipulated Decision document

Petitioners' case was resolved by agreement, with the IRS conceding more than 90% of the amounts at issue. On June 8, 2015, the parties executed a stipulated "Decision" document. As is typical with such stipulations, the document consists of a proposed Decision (the Tax Court's equivalent of a judgment) with a

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place for the judge's signature, followed by additional stipulations by the parties (in this instance, addressing the accrual of interest and a waiver of the restrictions of section 6213(a)) and the signatures of the parties. The additional stipulations signed by the parties did not include any mention of restriction on audits of subsequent tax years.

Entry of Decision for 2010 and 2011

On June 19, 2015, the Court entered Decision by signing the proposed document and thereby determining a deficiency of $14,485 for 2010 (plus an accuracy-related penalty) and no deficiency or penalty for 2011. Pursuant to Rule 190(a) and I.R.C. section 7482(a), a notice of appeal from that Decision would have been due 90 days thereafter, in September 2015. Neither party filed a notice of appeal (not surprisingly, in view of the settlement), and pursuant to section 7481(a)(1) that Decision became final in September 2015.

IRS examination of subsequent years

On May 23, 2016, petitioners received from the IRS a notice of a tax examination for their 2013 Federal income tax return. Petitioners allege that they "challenged the examination by letter [for which they do not specify a date] to the IRS, citing the June 2015 settlement for tax year 2011, indicating no deficiency, and the fact that the business operated by Petitioners remained unchanged in the ensuing two years. The IRS refused to honor the scope of the settlement agreement or the provision regarding no audit/examination over the next two years." The "provision" to which they refer is in the IRS's "Tax Guide for Small Business", I.R.S. Publication 334 (Dec. 18, 2018):

> Repeat examinations
>
> If we examined your return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can see if we should discontinue the examination.

I.R.S. Publication 334, at 46. Petitioners' citations of this publication include the title "Taxpayer Bill of Rights" and seem to refer to this language as supposedly incorporated therein.

It appears that petitioners submitted to the IRS requests for collection due process hearings with respect to tax liabilities for the years 2010, 2013, 2014, 2015, and 2016; and that IRS Appeals issued to petitioners notices of determination with respect to these periods on March 21, 2019. Petitioners did not file petitions in the Tax Court seeking our review of those determinations.

Petitioners allege that "[b]y notice dated October 2, 2019, the IRS served a Collection Information Statement on Petitioners relative to the claim for tax payments for tax year 2013, and other later years subjected to examination".

Petitioners' motions

On October 4, 2019, petitioners filed a motion (Doc. 13) to vacate or revise our June 2015 Decision pursuant to Rule 162. The motion is styled "Verified Motion to Re-open Case to Address and Enforce Scope of Original Settlement in Light of Improper Later Examination". In that motion,

> Petitioners seek relief from the Tax Court to re-open the case, interpret the scope of the settlement from June 2015 to include any tax examination for 2013, and an order striking the improper examination and any resulting deficiencies.
>
> WHEREFORE, Petitioners respectfully request:
>
> A. That the court re-open the prior case to address that the proper scope of the prior settlement includes an agreement not to examine the IRS return, under the same circumstances, of Petitioners for two years, including tax year 2013;
>
> B. Strike the examination and findings of any deficiencies from the examination of 2016; and
>
> C. Grant such other and further relief as is just.

On October 15, 2019, petitioners filed a "Verified Motion to Restrain Assessment or Collection Pending Motion To Reopen Case to Address Scope of Original Settlement" (Doc. 15). In that motion,

Petitioners request that this court enjoin the IRS from collection activities pending resolution of the pending motion to re-open and adjudication of the scope of the original settlement.

WHEREFORE, Petitioners respectfully request:

A. That the court enjoin assessment or collection activities; and

B. Grant such other and further relief as is just.

The Commissioner filed responses opposing both of petitioners' motions (see Docs. 17, 18).

## Discussion

### I. Petitioners have not shown that the IRS agreed to forego examination of post-2011 years

The main factual predicate for both of the motions that petitioners have filed is their allegation that, in settling their deficiency case for 2010 and 2011, the IRS agreed not to examine petitioners' returns for years after 2011 (i.e., a year in which they were determined, by the stipulated Decision, to have no deficiency of tax). However, they do not establish that alleged fact.

#### A. The parties' written agreement

The parties signed settlement agreement--which did include issues not within the Tax Court's jurisdiction (i.e., the accrual of interest and the waiver of the restrictions of section 6213(a))--did not include any provision as to the examination of subsequent years.

#### B. The document cited

The document that petitioners cite as supposedly reflecting their immunity from IRS audit for two years after 2011 simply does not purport to grant such immunity. Instead it invites a taxpayer for whom a previous examination has resulted in no change to his liability to "please contact us as soon as possible so we

can see if we should discontinue the [subsequent] examination". (Emphasis added.) Apparently the IRS will sometimes forego a subsequent examination in the case of "an individual tax return without a Schedule C or Schedule F" if there has been "an audit in the preceding two years", Internal Revenue Manual part 4.10.2.13.(1) (02-11-2016); but (1) the notice of deficiency attached to petitioners' petition indicates that their return did include a Schedule C, and (2) this agency practice, even where it is applicable, does not create a legal right or immunity. See United States v. Michaud, 860 F.2d 495, 499 (1st Cir. 1988).

Moreover, petitioners' motion indicates that what they seek is that we "[s]trike the examination and findings of any deficiencies from the examination of 2016". The document they cite, however, speaks only of a no-change audit in "the preceding two years". The no-change audit here was for 2011, so their argument--if otherwise valid--would at most relieve them as to 2012 and 2013. They explain no basis for any relief that would reach tax years after 2013.

C. Taxpayer Bill of Rights

The petitioners here seem not to make an express contention on the basis of the "Taxpayer Bill of Rights", but since they do cite it, we point out the following:

The Taxpayer Bill of Rights ("TBOR") consists of "10 provisions" and contains "core concepts about which taxpayers should be aware" but does not create any rights additional to the existing rights of taxpayers "scattered throughout the [tax] code." I.R.S. News Release IR-2014-72 (June 10, 2014); see also Moya v. Commissioner, 152 T.C. ___, ___ (slip op. at 24-25) ("in adopting TBOR in 2014, the Commissioner had no more in mind than consolidating and articulating 10 easily understood expressions [of] rights enjoyed by taxpayers and found in the Internal Revenue Code and in other IRS guidance . . . . [T]he Commissioner had no power to legislate any new rights"). This TBOR appears in the IRS's Publication 1 and also in the place where petitioners found it--the IRS's "Tax Guide for Small Business", I.R.S. Publication 334 (Dec. 28, 2018). Congress later enacted the TBOR in section 7803(a)(3), stating the requirement that "the Commissioner shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title," followed by the 10 provisions. But neither the IRS's TBOR nor section 7803(a)(3) as enacted by Congress creates any taxpayer rights; rather, they both allude to provisions elsewhere in the Internal Revenue Code.

Moreover, the language that petitioners quote regarding "Repeat examinations" does not appear in the TBOR, either as promulgated by the agency or as enacted by Congress. Rather, as is explained in Publication 334:

> The first part of this chapter [subtitled "Taxpayer Bill of Rights"] explains some of your most important rights as a taxpayer. The second part [subtitled "Your Rights as a Taxpayer"] explains the examination, appeal, collection and refund processes.

I.R.S. Publication 334, at 45. The language upon which petitioners rely is from the second part of the chapter. Thus, if petitioners intended a distinct contention based on the Taxpayer Bill of Rights, it does not grant them any immunity from audit.

II. The Tax Court lacks the power to grant the relief that petitioners request.

A. We cannot vacate or revise our June 2015 Decision.

Under Rule 162, a motion to vacate or revise the June 2015 decision was due in July 2015, and petitioners' motion--which asks us to "re-open" the case and plainly intends that we revise our Decision--was more than four years late. Rule 162 gives the Court some leeway ("unless the Court shall otherwise permit"); but section 7481(a)(1) made that Decision "final" in September 2015. Unlike the Federal District Courts operating under Rule 60 of the Federal Rules of Civil Procedure, the Tax Court is bound by that finality rule. See Snow v. Commissioner, 142 T.C. 413 (2014).

B. We cannot add a term to the parties' agreement.

Petitioners seem to suppose that we could revise our decision to declare that their agreement with the IRS be amended to include a provision barring audits but otherwise be left as is. However, the only remedy we can conceive of is a determination that the parties had not actually settled their case, because they had failed to reach a "meeting of the minds" on the term about subsequent audits, so that there is no settlement. See Hook v. Commissioner, T.C. Memo. 2009-33. If we had authority to entertain their motion and found petitioners credible, the apparent outcome would be that we would vacate the Decision and set the case for trial. Petitioners would not get the deal they had otherwise bargained for (including zero deficiency for 2011) but would instead have the burden of proving wrong the IRS's notice of deficiency for 2010 and 2011.

C. We cannot enjoin IRS examination or collection activity.

Under section 7421(a), the so-called "Anti-Injunction Act", "no suit for the purpose of restraining the collection of any tax shall be maintained in any court by any person". A limited exception in section 6330(e)(1) grants us, in a collection due process ("CDP") case, a limited power to enjoin collection for the periods before us; but this is case is a deficiency case (not a CDP case) and petitioners ask us to enjoin collection not in the years before us (2010 and 2011) but in other years. Section 7421(a) would forbid that.

For the foregoing reasons, it is

ORDERED that petitioners' motions (Docs. 13 and 15) are denied.

**(Signed) David Gustafson**
**Judge**

**ENTERED DEC 03 2019**