

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

WARRENTON S. LONDON & CARLENE C. )  
LONDON, )  
 ) CZ  
Petitioners, )  
 )  
v. ) Docket No. 2624-19.  
 )  
COMMISSIONER OF INTERNAL REVENUE, )  
 )  
Respondent )

**ORDER**

Petitioners, Mr. and Mrs. London, timely filed a petition on February 4, 2019, and elected as the place of trial Washington, DC. The petition contained Exhibits A through M. Mr. and Mrs. London attached part of the notice of deficiency, dated November 13, 2018, to their petition as Exhibit I.

The Commissioner of Internal Revenue, through its counsel and hereinafter referred to as respondent, filed a Motion to Dismiss For Failure to State a Claim Upon Which Relief Can Be Granted (respondent’s motion) pursuant to Rule 40<sup>1</sup> on April 11, 2019. Respondent asserts that the petition filed by Mr. and Mrs. London did not indicate what errors the Internal Revenue Service (IRS) made in its notice of deficiency that proposed deficiencies in tax for Mr. and Mrs. London’s 2015 tax year. Respondent’s motion was assigned to Judge Leyden, the undersigned, for disposition by Order dated May 23, 2019.

The Court by Order dated April 17, 2019, directed Mr. and Mrs. London by May 8, 2019, to file a proper amended petition that contained clear and precise assignments of each and every error that they allege to have been committed by the IRS with respect to the notice of deficiency and clear and concise lettered statements of fact on which they based their assignments of error. This Order also provided Mr. and Mrs. London with the opportunity to file an objection to

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<sup>1</sup> Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

respondent's motion by May 8, 2019. Mr. and Mrs. London did not file an amended petition. Mr. and Mrs. London did file a Notice of Objection to Motion to Dismiss For Failure to State a Claim Upon Which Relief Can Be Granted on May 8, 2019.

On May 1, 2019, Mr. and Mrs. London filed a Motion to Compel Responses to Interrogatories (motion to compel).<sup>2</sup> In that motion to compel, Mr. and Mrs. London asked the Court to order the IRS to respond by a written answer to ten questions. Mr. and Mrs. London do not seem to understand the Tax Court Rules of Practice and Procedure. A request to the IRS, in this case respondent's counsel, to answer questions can only be served on respondent's counsel after respondent has filed an answer to the petition. That had not, and has not, happened yet. The Court explained this in its Order dated May 3, 2019, denying Mr. and Mrs. London's motion to compel.

If Mr. and Mrs. London do not file a proper petition as the Court directed in its Order dated April 17, 2019, the Court will grant respondent's motion and Mr. and Mrs. London will lose the right to litigate their case before the Court. This Court is the only venue where a taxpayer may challenge a proposed deficiency in tax before paying the tax. If their case is dismissed, the IRS will assess and may move to collect the increased tax proposed in the notice of deficiency. After the increased tax is assessed, if Mr. and Mrs. London would like to continue to challenge the increased tax, they would have to pay the full amount due and file a timely claim for refund with the IRS. If that claim is denied and they wanted to dispute the denial, they would have to file an action in either the U.S. District Court District of Maryland or the U.S. Court of Federal Claims. Accordingly, the opportunity to challenge the IRS' proposed deficiency without first paying the tax is one that should not be squandered.

Judge Leyden's chambers attempted to contact Mr. and Mrs. London and respondent's counsel, Stephen C. Welker, to arrange a conference call to discuss respondent's motion. Mr. and Mrs. London did not provide their telephone number on their petition. Instead, after issuing an Order on June 4, 2019, Mr. and Mrs. London and their representative, David Richardson, contacted Judge Leyden's chambers. Mr. Richardson is not admitted to practice before the Court.

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<sup>2</sup> Mr. and Mrs. London filed an earlier Motion to Compel Response to Interrogatories on March 29, 2019. The Court denied the Motion to Compel Responses to Interrogatories on April 2, 2019.

Mr. and Mrs. London indicated they do not have a telephone number. Mr. Richardson instead provided his telephone number.

A conference call was initially scheduled for Thursday, June 27, 2019, at 10 a.m. so that Mr. and Mrs. London and respondent's counsel could discuss respondent's motion. After several conversations between Mr. Richardson and Judge Leyden's chambers, the Court decided to not allow Mr. Richardson to participate in the conference call. The Court requested Mr. Richardson to inform Mr. and Mrs. London to call Judge Leyden's chambers to: 1) let the Court know they were still interested in participating in a conference call without Mr. Richardson, and 2) provide a telephone number the Court could use to initiate the conference call. The Court warned that if Mr. and Mrs. London did not contact Judge Leyden's chambers by Wednesday, June 26, 2019, the Court would cancel the scheduled conference call. While Mr. Richardson did contact Judge Leyden's chambers and provide four "possible" telephone numbers<sup>3</sup> for the conference call, Mr. and Mrs. London did not contact Judge Leyden's chambers and the Court cancelled the conference call that was scheduled for Thursday, June 27, 2019.

By Order dated June 27, 2019, the Court set respondent's motion for a hearing at a Special Session on July 17, 2019, at 10:00 a.m. at its South Courtroom located at 400 2<sup>nd</sup> St. NW, Washington, DC 20217. That Order was served on Mr. and Mrs. London and respondent's counsel.

On June 28, 2019, Mr. and Mrs. London filed a Motion for Continuance Pursuant to Rule 133 (petitioners' motion). Petitioners' motion did not request that the hearing scheduled for July 17, 2019, be continued. In fact, the motion is not clear as to what Mr. and Mrs. London are asking the Court to do. Accordingly, the Court issued an Order dated July 3, 2019, served on Mr. and Mrs. London and respondent's counsel, setting petitioners' motion for the same hearing to be held on July 17, 2019.

The hearing was convened on July 17, 2019. Respondent's counsel, Stephen C. Welker, entered an appearance. Neither Mr. nor Mrs. London appeared. Mr. or Mrs. London did not submit a written statement in lieu of attending the hearing. See Rule 50(c).

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<sup>3</sup> Mr. Richardson did not state that any of those telephone numbers belonged to Mr. or Mrs. London.

At that hearing, respondent filed a report with an unredacted copy of the notice of deficiency dated November 13, 2018, with the Court. The Court by Order dated July 17, 2019, sealed the unredacted copy of the notice of deficiency and directed respondent to file a report with a properly redacted copy of the notice of deficiency. On July 29, 2019, respondent filed a report with a redacted copy of the notice of deficiency. Respondent mailed a copy of the report with the redacted notice of deficiency to Mr. and Mrs. London on July 29, 2019.

The notice of deficiency indicates that the IRS proposed to disallow Schedule C, Profit or Loss From Business, Other Expenses in the amount of \$19,033. This proposed disallowance of Schedule C Other Expenses resulted in a proposed increase to Mr. and Mrs. London's adjusted gross income. That in turn triggered two computational adjustments. The first is an increase to Mr. and Mrs. London's taxable social security benefits in the amount of \$1. The second is a decrease in Mr. and Mrs. London's Schedule A, Itemized Deductions, for Miscellaneous Deductions in the amount of \$381. The proposed changes stated in the notice of deficiency would increase Mr. and Mrs. London's tax liability in the amount of \$2,910.

On July 16, 2019, Mr. and Mrs. London filed a document titled "Petitioners' Amended Motion for Continuance Pursuant to Rule 133". This document was stamped "Hand Delivered" by the Court but Judge Leyden's chambers did not receive notification of this document until after the scheduled hearing. After reviewing that document the Court determined that Mr. and Mrs. London were requesting additional time to file an amended petition. Therefore by Order dated July 23, 2019, the Court recharacterized the document as Petitioners' Motion for Extension of Time to File an Amended Petition.

Because the record now contains a complete copy of the notice of deficiency, the Court will provide Mr. and Mrs. London with one last opportunity to amend their petition to state what in the notice of deficiency they disagree with and the facts they rely upon. To assist them, the Court is attaching a copy of Form 2, Petition, which Mr. and Mrs. London can use to comply with this Order. If Mr. and Mrs. London do not file an amended petition by the date listed below, the Court will grant respondent's motion and their case will be dismissed. If their case is dismissed, the IRS may proceed to assess the additional tax and interest and begin efforts to collect the tax liability.

Upon due consideration, it is

ORDERED, that petitioners' Motion for Continuance is denied.

ORDERED that respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted is held in abeyance. It is further

ORDERED that petitioners' Motion for Extension of Time to File an Amended Petition is granted. It is further

ORDERED that, no later than August 14, 2019, Mr. and Mrs. London shall file an amended petition that includes what they assert are the errors made by the IRS in the Notice of Deficiency dated November 13, 2018, for tax year 2015, and the facts upon which they rely. It is further

ORDERED that the Clerk of the Court is directed to attach to a copy of this Order served on petitioners a form that petitioners may use to file an Amended Petition.

If it would be helpful to Mr. and Mrs. London for the Court and the parties to have a telephone conference, then they, not their representative, may initiate that conference by calling (202-521-0823) the Chambers Administrator of the undersigned Judge.

If Mr. and Mrs. London fail to file an amended petition by August 14, 2019, then the Court would expect to grant respondent's motion and dismiss the case for failure to state a claim. Such a dismissal has the effect of upholding the IRS' notice of deficiency. See sec. 7459(d)

Mr. and Mrs. London are reminded of the free legal help available through the following clinics:

The American University-WCL  
Janet R. Spragens Federal Tax Clinic  
4300 Nebraska Avenue, N.W.  
Suite Y265  
Washington, D.C. 20016  
202-274-4144

The Catholic University of America  
Columbus School of Law  
Columbus Community Legal Services LITC  
3600 John McCormack Road, N.E.  
Washington, D.C. 20064  
202-319-6788

Legal Services of Northern Virginia  
10700 Page Avenue, Suite 100  
Fairfax, VA 22030  
703-778-6800

Washington D.C. Center for Public Interest Tax Law  
1111 Pennsylvania Ave, NW  
Washington, D.C. 20004  
202-739-3272

**(Signed) Diana L. Leyden**  
**Special Trial Judge**

Dated: Washington, D.C.  
July 31, 2019

UNITED STATES TAX COURT  
www.ustaxcourt.gov

(FIRST) (MIDDLE) (LAST)

\_\_\_\_\_  
(PLEASE TYPE OR PRINT) Petitioner(s)

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent



Docket No.

AMENDED PETITION

1. Please check the appropriate box(es) to show which IRS ACTION(S) you dispute:

- Notice of Deficiency
- Notice of Detennination Concerning Collection Action
- Notice of Final Detemlnation for [Full/Partial] Disallowance of Interest Abatement Claim (or Failure of IRS to Make Final Detennination Within 180 Days After Claim for Abatement)."
- Notice of Determination of Worker Classification\_".
- Notice of Detennination Concerning Relief From Joint and Several Liability Under Section 6015 (or Failure of IRS to Make Detemlnation Within 6 Months After Election or Request for Relief)."
- Notice of Certification of Your Seriously Delinquent Federal Tax Debt to the Department of State
- Notice of Detennination Under Section 7623 Concerning Whistleblower Action\_".

\*For additional information, please see "Taxpayer Infomlation: Starting a Case" at www.ustaxcourt.gov (accessible by hyperlink from asterisks above, or in the Court's infomlBtion booklet).

2. If applicable, provide the date(s) the IRS issued the NOTICE(S) checked above and the city and State of the IRS office(s) issuing the NOTICE(S): \_\_\_\_\_

3. Provide the year(s) or period(s) for which the NOTICE(S) was/were issued: \_\_\_\_\_

4. SELECT ONE OF THE FOLLOWING (unless your case is a whistleblower or a certification action):

If you want your case conducted under small tax case procedures, check here:  (CHECK  
If you want your case conducted under regular tax case procedures, check here:  ONE BOX)

NOTE: A decision in a "small tax case" cannot be appealed to a Court of Appeals by the taxpayer or the IRS. If you do not check either box, the Court will file your case as a regular tax case.

5. Explain why you disagree with the IRS detemlnation in this case (please list each point separately):

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