

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

WENDELL C. ROBINSON &)	
MAY T. JUNG-ROBINSON,)	
)	
Petitioners,)	
)	
v.)	Docket No. 6446-19 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This is a collection due process (“CDP”) case brought pursuant to I.R.C. section 6330(d), which is scheduled for trial at the Court’s Washington, D.C., trial session beginning January 13, 2020. In this case petitioners Wendell C. Robinson and May T. Jung-Robinson challenge a “Notice of Determination Concerning Collection Actions under IRC Sections 6320 or 6330 of the Internal Revenue Code”, by which the Appeals Office of the Internal Revenue Service sustained a notice of proposed levy to collect income tax for 2009 and 2012. The Robinsons filed a motion (Doc. 7) for partial summary judgment as to 2012 only. The Commissioner filed a response (Doc. 17), and the Robinsons filed a reply (Doc. 19). We will deny the motion.

Background

The Robinsons’ motion shows that they reported on their 2012 tax return an income tax liability of \$88,721.91 and paid that liability by withholding and by a check that accompanied the return. They argue that their 2012 liability has therefore been paid in full, that the statute of limitations (section 6501(a)) bars further assessments, and that the proposed levy to make further collections for 2012 cannot be sustained.

However, the Commissioner's response shows that the Robinsons' return reflected six mathematical errors, that their correction increased the Robinsons' tax liability by \$13,267.20 to a total of \$88,721.91, and that this larger total was timely assessed in July 2013 (well within the period of limitations). The Commissioner explains that these mathematical errors were corrected as such pursuant to section 6213(b)(1), which provides for a "notif[ication] ... [that] shall not be considered as a notice of deficiency".

Discussion

In view of the Commissioner's showing, we conclude that there is a genuine dispute of material fact as to whether the Robinsons' 2012 liability was fully paid, and we will deny the Robinsons' motion for summary judgment.

However, to inform the parties' preparation for an orderly resolution of this case, we point out that while we hold that the Commissioner's showing is sufficient to resist the Robinsons' motion for partial summary judgment, we do not here make any holding as to whether the Commissioner has shown that Appeals' fulfilled its obligation under section 6330(c)(1) to "obtain verification ... that the requirements of any applicable law or administrative procedure have been met". The recitation of verification in Appeals' notice of determination makes no mention of mathematical corrections under section 6213(b)(1), nor of whether the IRS "notified" the Robinsons of such corrections in compliance with that provision so as to give them the opportunity to request abatement pursuant to section 6213(b)(2)(A) and thereby obtain the opportunity to resist the corrections under deficiency procedures. The Commissioner's brief describes the alleged mathematical errors and cites section 6213(b)(1), but it makes no allegation about notification to the Robinsons or an opportunity to request abatement. We would expect to receive evidence on this issue in due course.

It is

ORDERED that the Robinsons' motion for partial summary judgment is denied.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
September 27, 2019