

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

ABIGAIL RICHLIN, )  
)  
Petitioner(s), ) **BD**  
)  
v. ) Docket No. 16301-16 L.  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent )

**ORDER**

This collection due process case requires that we decide whether respondent's Appeals Office (Appeals) abused its discretion when it upheld a proposed levy action to collect an allegedly unpaid tax liability owed by petitioner for her taxable year ended December 31, 2006. Petitioner and her former husband, Milton, filed a joint return for the prior taxable year that showed an overpayment. In January 2007, petitioner and Milton divorced. Both before and after entry of the divorce decree by a Nevada court, Milton made estimated tax payments in respect of the taxable year that began on January 1, 2006. Milton died in August 2007. Petitioner and Milton's estate filed separate returns for 2006.

In the case before us, petitioner alleges, among other things, that she does not owe the amount respondent seeks to collect. In particular, she contends that she was entitled to credit against the liability shown on her 2006 return portions of the 2005 joint overpayment and the estimated payments Milton made for 2006 in amounts sufficient to satisfy that liability. Appeals' determination, by contrast, rests on the proposition that Milton's estate was entitled to credit the full amounts of the estimated payments and 2005 overpayment.

The allocation of the credits turns in part on whether petitioner and Milton agreed to allocate those amounts in a manner other than that prescribed by the default rule provided in section 1.6654-2(e)(5)(ii)(A), Income Tax Regs. Appeals bases its position, in part, on a premarital agreement Milton and petitioner

executed that the divorce court interpreted to require petitioner to pay the tax on the income shown on her 2006 return.

In our consideration of the case, we determined that the impact of the premarital agreement and the divorce court's order concerning the payment of tax for 2006 on the allocation of the credits in issue may turn on whether petitioner made any payments to Milton's estate or its beneficiaries by reason of the divorce court's order. To the extent she made any such payments, she could be viewed as having "bought in" to a share of the credits to which she might otherwise not been entitled. We found no evidence in the record of any such payments, however, and the parties' counsel have advised us that they agree that the record is silent on that question. In a teleconference with those counsel on January 9, 2020, we discussed the implications of that gap in the record and asked that they advise us whether they wanted to submit supplemental briefs on that point.

Petitioner's counsel has since informed us of his interest in providing us with his views on the significance for the present case of the divorce court's judgment concerning the payment of the 2006 taxes and has asked that, given his schedule, we allow him until February 7, 2020, to do so. We will grant that request in part.

Our willingness to consider supplemental briefs is limited to a somewhat narrower issue than the one petitioner's counsel referred to in his request. The implications of the divorce court's order on the allocation of the credits in issue between petitioner and her former husband's estate has always been an acknowledged issue in the case. It is only the question of the potential relevance of the gap in the record described above that has arisen since the parties submitted their initial briefs. We expect that any supplemental briefs submitted in response to this order will be limited to that question and will include only points not covered by the briefs already submitted.

On the premises stated, it is

ORDERED that either party may, should he or she choose, submit a supplemental brief, on or before February 7, 2020, addressing the implications of the absence from the record of any evidence of whether petitioner made any

payments to Milton's estate or its beneficiaries as a result of the divorce court's order concerning the payment of 2006 taxes.

**(Signed) James S. Halpern  
Judge**

Dated: Washington, D.C.  
January 13, 2020