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

CHARLES ROMANO & RHONDA ROMANO,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 14072-18 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	

ORDER AND DECISION

This case is on the Court's October 19, 2020, trial calendar for New York City. It began as the Romanos' challenge to a notice of determination by the Commissioner to proceed with enforced collection of their tax debt from the 2012-2016 tax years. The case then began shrinking. In March 2019, we dismissed tax year 2013 from the case for lack of jurisdiction because the Commissioner hadn't issued a determination to the Romanos for that year. Then it turned out that they had paid their tax bill back in March 2018, months before they filed their petition. The Commissioner noticed this and, in August of this year, moved to dismiss another large part of the case for mootness. We granted that motion because payment of a tax debt moots any challenge to the collection of that debt by lien or levy. *See Greene-Thapedi v. Commissioner*, 126 T.C. 1, 7 (2006).

The Romanos didn't want their case to be entirely dismissed, however. They continued to seek repayment of the interest that they had paid back in 2018 when they paid their tax bill. This remains a live issue because of the Second Circuit's decision in *Wright v. Commissioner*, 571 F.3d 215, 220 (2d Cir. 2009). We have to follow its holding under *Golsen v. Commissioner*, 54 T.C. 742, 757 (1970). The Commissioner concedes that, under *Wright*, we must treat a taxpayer

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who invokes our jurisdiction to review a notice of determination under IRC §§ 6320 or 6330 and who raised the issue of interest abatement at his collection due process hearing as also invoking our jurisdiction under § 6404. Section 6404(h) gives us jurisdiction to review an IRS determination not to abate interest. *Wright,* 571 F.3d at 219.

So far, so good for the Romanos.

We will treat what is left of their case as one seeking review of the IRS's decision not to abate the interest on their tax debt. Their payment of that debt does not moot this part of their case because we can order a refund of any interest that the IRS should have abated. *Id.*

The standard of review we use is abuse of discretion. I.R.C. § 6404(h)(1); *see also Woodral v. Commissioner*, 112 T.C. 19, 23 (1999). The Commissioner abuses his discretion when he makes an error of law or clearly erroneous finding of fact, or when he rules irrationally. *Antioco v. Commissioner*, 105 T.C.M. (CCH) 1234, 1237 (2013).

The scope of review we use is *de novo*, meaning we may look beyond the administrative record. *See, e.g.*, *Porter v. Commissioner*, 130 T.C. 115, 122-23 (2008); *Goldberg v. Commissioner*, 119 T.C.M. (CCH) 1211, __ n.3 (2020). The only evidence currently in the record, however, is the administrative record, which was produced by the Commissioner and isn't challenged by the Romanos. The Romanos *do* state that they have a lot of evidence from outside the administrative record that they would introduce if the case were to move to trial.

The problem for the Romanos on this point is that they describe their proposed evidence as "medical documentation . . . concerning my medical status, that of wife and 2 adult children as well. Please note that this will be as many as 1000 pages of documents, if not more, concerning many many hospitalizations and surgical procedures endured by this family over the last 10 years."

We will accept, on a motion for summary judgment, the truthfulness of the Romanos' characterization of the length and severity of their health and financial difficulties. The problem is that they are legally irrelevant to the question of whether the Commissioner should have abated the interest on the Romanos' tax bill and then refunded it to them.

Since 1996, the Code has told the Commissioner that he should abate interest caused by any "unreasonable error or delay *by an officer or employee of the Internal Revenue Service* * * * in performing a ministerial or managerial act." *See* Taxpayer Bill of Rights 2, Pub. L. 104-168, § 301, 110 Stat. 1452, 1457 (1996) (codified as amended at I.R.C. § 6404(e)(1)) (emphases added). A "ministerial act" is "a procedural or mechanical act that does not involve the exercise of judgment or discretion." 26 C.F.R. § 301.6404-2(b)(2) (2019). This definition captures only such bureaucratic snafus as delays in transferring a case between offices or in issuing an already agreed-upon notice of deficiency. *See id.* § 301.6404-2(c), examples (1) and (2). "Managerial" acts include such mistakes as "the temporary or permanent loss of records" and, more generally, mistakes in the "exercise of judgment or discretion relating to management of personnel." *See id.* § 301.6404-2(b)(1).

Note, however, that the mistakes or delays that trigger interest abatement are the ministerial or managerial delays caused by IRS employees. Perfectly reasonable, understandable delays in paying tax bills caused by taxpayers' own unforeseen medical problems--or any other problems that *taxpayers* have--just aren't included in the law's definition of what delays can justify interest abatement.

And the evidence before us on this motion even gives us an example of this distinction. Remember that Dr. Romano went to the IRS in March 2018 to pay his tax bill. He asked the IRS employee with whom he spoke to give him the correct payoff amounts for each year. The IRS employee gave him the numbers; he paid those amounts. But then he kept getting bills saying that he owed interest on his 2015 year. The Appeals officer who looked into this discovered that the IRS employee that Dr. Romano had asked to calculate his bill had made a mistake. The Appeals officer reasoned that if Dr. Romano had been given the correct, slightly higher, number then he would have paid it right then and there.

He therefore abated *this* interest, because the only reason the IRS charged it was because of the IRS's own mistake. He did not abate any other interest because the Romanos ended up owing it on account of their personal situation, not anything that the IRS itself did.

This is not only not an abuse of discretion, but a correct statement of the law in this area on facts that no one disputes. It is therefore

ORDERED that respondent's August 19, 2020, summary-judgment motion is granted. It is also

ORDERED and DECIDED that petitioners are not entitled to any additional abatement of interest relating to income tax for the tax years 2012, 2014, 2015, or 2016. It is also

ORDERED and DECIDED that respondent's determination, as described in the Supplemental Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated January 9, 2020, is sustained.

(Signed) Mark V. Holmes
Judge

ENTERED: **OCT 15 2020**