

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

JOHN E. ROGERS & FRANCES L. ROGERS,)
)
 Petitioners,)
)
 v.) Docket No. 7390-10.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

We entered decision in this case on August 26, 2015. Petitioner appealed; and the U.S. Court of Appeals for the Seventh Circuit affirmed our decision November 3, 2016, and denied petitioner’s request for rehearing on January 3, 2017. It appears that, pursuant to 28 U.S.C. sec. 2101(c), the last day for filing a petition for certiorari with the Supreme Court was no later than April 3, 2017, and that pursuant to 26 U.S.C. sec. 7481(a)(2)(A) our decision in this case became final no later than that date.

However, the Government's brief filed with the Court of Appeals on September 12, 2016, had stated (at 67-69) that--

computation errors resulted in a \$134,000 overstatement of Rogers's taxable income and, thus, a commensurate overstatement of the amount of his tax deficiency and penalties.... We therefore request that the Tax Court's decision be remanded for the limited purpose of correcting the overstatement of Rogers's income and recomputing the amount of the deficiency and penalties accordingly--

--but, again, the Court of Appeals did not order a remand but simply affirmed.

By order of February 1, 2017, we noted this circumstance and ordered the parties to “file a joint status report ... giving their recommendation(s) for further proceedings, if any, in this case.” The parties’ joint status report filed February 15, 2017. stated:

6. Respondent is recomputing the deficiency, penalties, and interest, and proposes to administratively process credits to petitioners' account for taxable year 2004 in order to effectuate the necessary corrections. * * *

8. Petitioners agree to review the computations and, if and when agreed, will agree to respondent's administrative processing of credits.

No motion to vacate or revise our decision was filed under Rule 162 by April 3, 2017 (nor thereafter).

In a joint status report filed June 13, 2017, the parties advised that “respondent has recomputed the deficiency, penalties, and interest, * * * [which] result in reductions of the tax, penalties, and interest already assessed against petitioners”, and that petitioners now agree with the recomputations.

Section 7481 makes our situation after the entry of decision somewhat different from that of the district courts. Our decision (in an amount the parties now agree was excessive) became final no later than April 3, 2017. It is unclear whether in this case we have jurisdiction to revise our decision. We explained in Snow v. Commissioner, 142 T.C. 413, 419-20 (2014):

As a general rule, the finality of a decision is absolute. See Abatti v. Commissioner, 86 T.C. at 1323. There are very few exceptions. Cinema '84 v. Commissioner, 122 T.C. 264 (2004), aff'd, 412 F.3d 366 (2d Cir. 2005). * * * We may also “correct” a final decision where a clerical error in the decision is discovered after the decision has become final. Michaels v. Commissioner, 144 F.3d 495 (7th Cir. 1998), aff'g T.C. Memo. 1995–294.

Arguably the computational error that both parties acknowledge is a “clerical error in the decision”, as in Michaels, but here that error was discovered not “after the decision has become final”, but before. However, we do not have pending before us any motion under Rule 162. And more important, the Commissioner has

undertaken “to administratively process credits to petitioners' account for taxable year 2004 in order to effectuate the necessary corrections”. When he does so, the thorny jurisdictional question we describe above will apparently become moot. It is therefore

ORDERED that, if either party wishes to file a motion under Rule 162 to vacate or revise the decision, that party should do so (along with a motion for leave to file out of time) no later than July 14, 2017, and the motion for leave should explain how we have jurisdiction to revise the decision. If neither party files such a motion, then this case will remain closed.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
June 15, 2017