

UNITED STATES TAX COURT  
WASHINGTON, DC 20217 PA

JAMES J. YEDLICK, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 12784-16.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )  
 )

**ORDER**

On May 31, 2016, petitioner filed a petition with the Court, seeking review of a notice of deficiency issued to him for 2013. Based on the parties’ prior filings and correspondence, it appears that the parties have reached a basis for settlement as to the deficiency and accuracy-related penalty for 2013 but have not filed a stipulated decision or a stipulation of settled issues. Petitioner seems to want to move to recover litigation costs but misunderstands the procedures for filing a claim for litigation costs with this Court.

On November 1, 2016, petitioner filed a letter with the Court stating:

Now that the deficiency arbitration hearing is concluded and the decision is handed down and sent with this, the petitioner needs the court’s closure on that portion of this case. But the petitioner would ask of this court not to close the case entirely, [sic] This petitioner needs the court’s opinion in a matter pertaining to this case which is separate from the court’s closure on the deficiency hearing results, as presented here, and will follow up with this court with this secondary matter \* \* \*

Petitioner attached to his letter a copy of a proposed decision document bearing only petitioner’s signature. The proposed decision document stated that there was no deficiency in income tax due from petitioner for 2013. In his letter petitioner did not discuss the secondary matter.

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On January 17, 2017, respondent filed a response to petitioner's letter dated November 1, 2016, stating that the case had not been resolved because petitioner had submitted a signed stipulated decision document to the Internal Revenue Service (IRS) Office of Appeals but had written underneath his signature "My signature above is only agreeing with the decision outlined on the previous page. The petitioner requests this case be on going." Respondent further stated that as a result no stipulated decision document had been filed with the Court. Respondent attached to his response a copy of this proposed stipulated decision document stating that there was no deficiency in income tax due from petitioner for 2013.

By order dated January 23, 2017, the Court notified petitioner that no stipulated decision document had been submitted for the Court's consideration and, accordingly, no decision had been entered concluding his deficiency case. In that order the Court directed the parties to confer and file a status report on or before February 20, 2017, on the then-present status of the case.

On January 31, 2017, petitioner filed a Motion to Dismiss, indicating he believed the matter as to the notice of deficiency resolved and requesting litigation costs of \$60 and an additional amount of \$60 for "mailing, materials, copying, etc."

On February 16, 2017, respondent filed a status report. In that status report respondent stated that, during a phone call, petitioner had stated that he wanted to resolve his case promptly but wanted his litigation costs paid and that it was wrong for respondent to withhold the stipulated decision document petitioner had previously signed.

By order dated February 24, 2017, the Court denied petitioner's motion to dismiss and explained that the petition in this case may not be dismissed by petitioner because the case was based on a notice of deficiency and, as a result, the Court was required by statute to enter a decision. The Court also explained that petitioner's request for litigation costs was premature because there was no indication that the parties had entered into a stipulation of settled issues, which was a requirement in cases where the parties agreed on a settlement of the issues but not as to the issue of costs. In that order the Court directed the parties to file on or before March 24, 2017, a stipulation of settled issues or a status report on the then-present status of the case.

On March 20, 2017, petitioner filed a letter with the Court in which he stated:

According to the Court's own language \* \* \* there is no longer a case of deficiency against the petitioner. There is no money issues to settle, for a settlement requirement. No court cost can be asked for or given by this Court, unless respondents [sic] agree to it, and they do not. \* \* \* No settlement signature is required because there is [sic] no settlement issues to address, because this case is now based on a notice of deficiency, and all settlement issues have been addressed in prior briefs and signed off on."

Petitioner attached to his letter a copy of a proposed stipulation of settlement, which stated that there was no deficiency in income tax and no section 6662(a) penalty for 2013.

On March 22, 2017, respondent filed a status report and indicated, as reported in the prior status report, that he had prepared a stipulated decision document reflecting an agreement that there was not any deficiency for 2013. In the status report respondent stated that the parties had agreed that petitioner did not have any deficiency but petitioner had requested respondent's counsel personally pay his litigation costs and make several admissions on the record. Respondent would not agree and reported to the Court that respondent anticipated filing a Motion for Entry of Decision.

Prior to preparing the motion for entry of decision, respondent mailed to petitioner another stipulated decision document. Petitioner signed and dated two copies of the stipulated decision document, but respondent was concerned that petitioner did not realize that by filing a signed decision document he was agreeing to forego his claim for litigation costs. Respondent's counsel and his manager called petitioner to discuss this concern. Petitioner indicated that he intended to pursue his claim for litigation costs in another venue and insisted that respondent file the signed stipulated decision document. Respondent's counsel was reluctant to file the stipulated decision document because he believed that petitioner did not understand the possible effect that the filing of the stipulated decision document might have on his claim for litigation costs.

On April 3, 2017, petitioner filed a status report indicating he was filing his own stipulation of settlement and attached a document titled "Stipulation of Settlement by Petitioner". In that document petitioner asserted (1) that there was

no deficiency in income tax nor overpayment due for 2013, (2) that the IRS should return the litigation cost of \$60 to him as the prevailing party, and (3) that “the IRS shall pay litigation cost [sic] in the amount of \$5,000.00 to the prevailing party, under Rule 231(A1),(A3) [sic].”

Under section 7430(a)(2), a prevailing taxpayer in a court proceeding against the United States may be awarded reasonable litigation costs incurred in such proceeding. The Court’s Rules require that, where the parties have settled all other issues in the case except litigation costs, any award of litigation costs be included in the single decision disposing of the case. See Rule 232(f) (“The Court’s disposition of a motion for reasonable litigation or administrative costs shall be included in the decision entered in the case.”). By executing a stipulated decision or if the Court enters a decision in this case, petitioner will be abandoning his claim for litigation costs because the Court’s Rules governing awards of litigation costs contemplate only a single decision being entered in a case. See, e.g., Manchester Group & Subs. v. Commissioner, T.C. Memo. 1994-604, 1994 Tax Ct. Memo LEXIS 612, at \*19 (“If a stipulated decision is submitted by the parties and it includes no provision for litigation costs, the Court immediately enters the decision and regards the taxpayer as having waived any claim with respect to litigation and administrative costs.”), rev’d on other grounds, 113 F.3d 1087 (9th Cir. 1997).

The correct procedure for presenting a claim for litigation costs where the parties have settled all other issues in the case except litigation costs is for petitioner to file a motion for an award of reasonable litigation costs rather than a stipulated decision. See Rule 231(a)(2)(C). Pursuant to section 7430 and Rule 231, petitioner’s motion for litigation costs must include the following: (1) a statement sufficient to demonstrate that petitioner has substantially prevailed with respect to either the amount in controversy or the most significant issue or set of issues presented; (2) a statement that petitioner’s net worth did not exceed \$2 million at the time the petition was filed in the case; (3) a statement that petitioner has exhausted any administrative remedies available to him within the IRS; (4) a statement that petitioner has not unreasonably protracted the Court proceedings; (5) a statement of the specific litigation costs claimed by petitioner, supported by an affidavit or declaration by petitioner setting forth the nature and amount of each cost claimed; and (6) if some or all of the issues in a case (other than litigation costs) have been settled by the parties, a stipulation as to settled issues signed by the parties setting forth the terms of the settlement as to each issue.

For cause, it is

ORDERED that, pursuant to Rule 231(a)(2)(C), petitioner shall file a motion for an award of costs that contains the above enumerated six items no later than July 19, 2017, and shall serve a copy of the same on respondent. It is further

ORDERED that, if petitioner files such a motion, then respondent shall file and serve a response no later than August 2, 2017.

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

Dated: Washington, D.C.  
July 5, 2017