

UNITED STATES TAX COURT
WASHINGTON, DC 20217

STANLEY H. EPSTEIN,)
)
Petitioner(s),)
) **CT**
v.) Docket No. 28731-15W.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

On May 19, 2017, this case was assigned to this Division of the Court. On April 14, 2016, the parties filed a joint Motion to Remand in which they represented that respondent’s Whistleblower Office (Office) had reconsidered its determination as to whether petitioner is entitled to an award. In light of that development, the parties submitted that “[j]ustice would be served by reopening petitioner’s claim.” On April 19, 2016, the Court continued the case; held the Motion to Remand in abeyance; and directed the parties to work toward possible resolution of the case.

On April 11, 2017, respondent filed a Status Report in which he indicates that the Office is prepared to make a revised determination regarding petitioner’s claim and is prepared to issue a new final determination letter. Respondent asked that the Court grant the Motion to Remand as a prelude to the Office’s taking that step. On April 20, 2017, petitioner advised the Court of his position that a remand is unnecessary; that it would needlessly delay the case; and that the Court should simply direct respondent to issue a new determination letter. On this point we agree with petitioner.

This Court has not yet decided whether it can appropriately order a remand in a whistleblower case. We have held that remand is allowed and appropriate in certain collection due process (CDP) cases. See, e.g., Lunsford v. Commissioner, 117 T.C. 183, 189 (2001) (“Of course, there may be cases, where taxpayers were not given a proper opportunity for an Appeals hearing, where it will be appropriate to require that an Appeals hearing be held.”). By contrast, remand will generally

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be inappropriate where the petitioner is entitled to a trial de novo, as in deficiency cases and certain other types of cases, such as “stand alone” innocent spouse cases. See, e.g., Friday v. Commissioner, 124 T.C. 220, 222 (2005) (“A petition for a decision as to whether relief is appropriate under section 6015 is generally not a “review” of the Commissioner’s determination in a hearing but is instead an action begun in this Court.”). In deciding whether remand would be appropriate in whistleblower cases, one relevant question would be the appropriate standard of review, that is, whether the matter we are asked to address is subject to de novo review or review for abuse of discretion. This Court has not yet decided the appropriate standard of review of a final IRS determination in a whistleblower case.

Because we believe that a remand of this case would serve no useful purpose, we deem it unnecessary to decide these questions of first impression here. Respondent represents that the Office has reconsidered its decision and is prepared to issue a new final determination letter. Petitioner opposes a remand and urges that the Office go ahead and issue a new final determination letter. As we held in Comparini v. Commissioner, 143 T.C. 274, 282-283 (2014), section 7623(b)(4) enables a whistleblower to file, and gives us jurisdiction over, a petition filed in response to “any” determination that the Office makes, including a subsequent or revised determination with respect to the same original claim. And in Ringo v. Commissioner, 143 T.C. 297, 300 (2014), we held that we do not lose jurisdiction where the IRS informs a whistleblower, after he files his petition, that the Office was still considering his claim and that the original determination letter was mailed in error.

We see no reason why a remand is required to enable the Office to issue a new final determination letter. Alternatively, if the parties have resolved all issues in this case to their mutual satisfaction, they may employ this Court’s standard procedures for bringing this case to an end. This order does not foreclose the possibility of a remand, should we determine that we may properly order one, in a future whistleblower case where a remand would serve a useful purpose.

On the basis of the foregoing, it is

ORDERED that the Motion to Remand, filed April 14, 2016, is denied. It is further

ORDERED that jurisdiction is retained by this Division of the Court.

**(Signed) Albert G. Lauber
Judge**

Dated: Washington, D.C.
July 28, 2017