

UNITED STATES TAX COURT
WASHINGTON, DC 20217

KIMBERLY K. CHAMBERS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 26549-16S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This case is currently set for trial on September 11, 2017, in Columbus, Ohio. Kimberly K. Chambers seeks review of the Commissioner’s deficiency determination for 2014. The Commissioner filed a motion for summary judgment under Rule 121 and a memorandum in support of that motion on May 31, 2017.¹ The Court ordered a response to the motion, which Ms. Chambers provided.

Ms. Chambers filed a return erroneously claiming a net premium tax credit of \$3,000, when the correct amount should have been \$120. That same return reported an overpayment, which the Commissioner refunded. Upon examination of the return, the Commissioner issued a notice of deficiency determining the correct amount of tax. Ms. Chambers argues that the Commissioner should be precluded from determining a deficiency because the Commissioner should have stopped the refund before it was issued. We will enter a decision for the Commissioner.

Background

From May to December of 2014 Ms. Chambers purchased health insurance through the Ohio Health Insurance Marketplace. She used a combination of her income and advanced premium tax credits to pay for that insurance. At the end of

¹All Rule references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated, and all section references are to the Internal Revenue Code in effect for the years in issue.

the year the Ohio Health Insurance Marketplace issued her a Form 1095-A, Health Insurance Marketplace Statement. The Form 1095-A reports that during each month, from May to December of 2014, Ms. Chambers received an advanced premium tax credit of \$394.00, for an annual total of \$3,152.00. The Form 1095-A also shows that Ms. Chambers' monthly insurance premiums were \$461.70, for an annual total of \$3,693.60, and the monthly premium for the second lowest cost silver plan offered through the Ohio Health Insurance Marketplace in 2014 was \$445.42 for an annual total of \$3,563.36.

Ms. Chambers filed a Form 1040A, U.S. Individual Income Tax Return, for 2014 on March 9, 2015. On her return, Ms. Chambers made an error when filling in the figures related to the premium assistance tax credit, substituting the annual totals for monthly figures. She included a Form 8962, Premium Tax Credit (PTC), reporting for each month from May to December, a monthly health insurance premium amount of \$3,693.00, a monthly second lowest cost silver plan monthly premium amount of \$3,563.00, a monthly health insurance contribution amount of \$36.00, a monthly premium tax credit allowed of \$3,527.00 and a monthly advance payment of premium tax credit of \$3,152.00. The total premium tax credit for 2014 reported on the return is \$28,216.00 and the total advanced premium tax credit payment for 2014 reported on the return is \$25,216.00. Ms. Chambers reported a net premium tax credit of \$3,000.00 and a total tax refund of \$9,683.00. On April 13, 2015, the Commissioner issued Ms. Chambers a refund of \$9,683.00.

The Commissioner examined Ms. Chambers' return. As a result of the examination, the Commissioner adjusted Ms. Chambers' premium assistance tax credit and advanced premium assistance tax credit amount for each month. The Commissioner determined that Ms. Chambers was entitled to a \$120.00 net tax credit rather than the \$3,000.00 she had claimed. The Commissioner made no other adjustments and determined a deficiency of \$2,880.00 for 2014, issuing a notice of deficiency on September 12, 2016.

Ms. Chambers filed a timely petition to this Court. At the time of the petition Ms. Chambers resided in Ohio. In her petition she states that she relied on the information on the form 1095-A, on the "Tax Act software" that she used to prepare the return and on the "IRS to correct any mis-calculations when they reviewed the return". She also argues that the Commissioner "had ample time to correct and find any mis-calculations before sending [her] the refund". In the petition Mr. Chambers did not argue that the Commissioner's adjustment were incorrect, only that the Commissioner should have made the adjustment before issuing her tax refund.

The Commissioner filed a motion for summary judgment under Rule 121 and an accompanying memorandum. The Commissioner argues that there is no dispute over any material fact, saying that Ms. Chambers did not dispute the “substantive determinations made in the notice of deficiency.”

The Court ordered a response to the motion, which Ms. Chambers provided. In her response Ms. Chambers argues that her 2014 return was examined before her refund was issued, saying that “[o]nce the return was submitted, the Internal Revenue Service audited the tax return and requested copies of the information that I entered for the premium tax credit.” Ms. Chambers states that although “refunds paid prior to audit are a matter of grace and are not final determinations”, her return “was audited and the information was reviewed prior to the release of the refund.”

Analysis

Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in controversy. The purpose of summary judgment is to expedite litigation and avoid unnecessary and time-consuming trials.² We may grant summary judgment only if there is no genuine dispute as to any material fact.³ The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute of any material fact.⁴ In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party, Ms. Chambers.⁵ Under Rule 121(d), when a motion for summary judgment is made and properly supported, the nonmoving party may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine dispute for trial.

²Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988).

³Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

⁴Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (1994).

⁵FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

A taxpayer who receives advance premium assistance credits must reconcile those credits against the amount for which he or she is eligible.⁶ When a taxpayer is entitled to a larger credit than the amount already paid to an insurer on his or her behalf, the taxpayer may claim the remaining amount of the credit when filing his or her return. If the amount of the advance premium tax credit is more than the amount to which a taxpayer is ultimately entitled, the taxpayer owes the excess credit back to the Government, and it is reflected as an increase in tax.⁷

In reconciling her credit, Ms. Chambers was entitled to a larger credit than the amount already paid to her insurer on her behalf. That is not in dispute. But Ms. Chambers put the wrong numbers on her Form 8962. Based on the information on her Form 1095-A, Ms. Chambers was entitled to a \$120 net refund of the premium assistance tax credit; she reported \$3,000.

Refund and Deficiency

The regulations allow the Commissioner to issue a refund of a claimed overpayment of tax based solely on the taxpayers statement of tax owed.⁸ We have found that a refund before audit is “a matter of grace to [the] taxpayer” and does not preclude the Commissioner from using deficiency procedures to collect outstanding tax liability.⁹ We have also held that a refund is not binding on the Commissioner in the absence of a closing agreement, valid compromise, or final adjudication.¹⁰

In this case the Commissioner issued the refund on the basis of Ms. Chambers’ statement of the tax owed. While Ms. Chambers claims that her return

⁶See McGuire v. Commissioner, 149 T.C. __, __ (slip op. at 11-12) (August 28, 2017).

⁷Sec. 36B(f)(2).

⁸Sec. 301.6402-4, *Proced. & Admin. Regs.*

⁹Warner v. Commissioner, T.C. Memo 1974-243, 33 T.C.M. (CCH) 1080, 1081 (1974), *aff’d*, 526 F.2d 1 (9th Cir. 1975) (quoting Clark v. Commissioner, 158 F.2d 851 (6th Cir. 1946).

¹⁰Meridian Mut. Ins. Co. v. Commissioner, 44 T.C. 375, 379 (1965), *aff’d*, 369 F.2d 508 (7th Cir. 1966).

was examined before the refund was issued, that is not enough to bind the Commissioner to the refund and prohibit him from determining a deficiency.

Conclusion

There is no genuine dispute as to any material fact with respect to Ms. Chambers' 2014 tax liability. Ms. Chambers is only entitled to \$120 of the \$3,000 premium assistance tax credit that she claimed. The Commissioner is not bound by the refund issued to Ms. Chambers. Accordingly, it is

ORDERED that respondent's motion for summary judgment, filed May 31, 2017, is granted, and, as a result Ms. Chambers does not need to appear at the Columbus, Ohio session of the Court on September 11, 2017. It is further

ORDERED and DECIDED that there is a deficiency in income tax due from petitioner for the taxable year 2014 in the amount of \$2,880.00.

(Signed) Ronald L. Buch
Judge

ENTERED: **AUG 29 2017**