

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

PA

BRADLEY A. HITE, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 7976-14.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )

**ORDER**

This case for the redetermination of deficiencies for the taxable years 2001, 2002, and 2003 (years in issue) is before the Court on respondent’s Motion for Leave to File Out of Time First Amendment to Answer, filed June 15, 2018.<sup>1</sup> In his First Amendment to Answer, lodged June 15, 2018, respondent alleges that if petitioner’s U.S. Virgin Islands (USVI) territorial tax returns for the taxable years 2002 and 2003 are treated as having been filed with the Internal Revenue Service, the notice of deficiency at issue, dated January 9, 2014, was sent to petitioner before the expiration of the applicable period of limitations for assessment under section 6501(a). Respondent’s first amendment to answer includes allegations that the parties executed a series of agreements pursuant to section 6501(c)(4) extending the period for assessment for the taxable years 2002 and 2003.

Petitioner filed a response in opposition to respondent’s motion. Respondent filed a reply to petitioner’s response, to which petitioner in turn filed a response.

In general, after a responsive pleading has been served (as is the case here), “a party may amend a pleading only by leave of Court or by written consent of the adverse party, and leave shall be given freely when justice so requires.” Rule 41(a). This Rule reflects “a liberal attitude toward amendment of pleadings.” 60 T.C. 1089 (explanatory note accompanying promulgation of Rule 41). In determining whether justice requires granting leave to permit the filing of an

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<sup>1</sup>Section references are to sections of the Internal Revenue Code, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

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amended pleading, the Court considers the underlying circumstances, including “whether an excuse for the delay exists and whether the opposing party would suffer unfair surprise, disadvantage, or prejudice if the motion to amend were granted.” Estate of Quick v. Commissioner, 110 T.C. 172, 178 (1998); see Foman v. Davis, 371 U.S. 178, 182 (1962).

A review of the original pleadings in this case shows that petitioner alleged in the petition that his USVI territorial tax returns should be treated as Federal income tax returns for purposes of section 6501(a). He did not allege that he had filed the USVI territorial tax returns with the IRS. Respondent filed an Answer to the petition and addressed petitioner’s specific allegations regarding the period of limitations. In his Reply to respondent’s Answer, petitioner admitted that he “did not file with Respondent a federal income tax return for the taxable years 2001, 2002, or 2003.”

Against this backdrop, and the Court’s recent opinion in Coffey v. Commissioner, 150 T.C. \_\_\_\_ (Jan. 29, 2018) (holding that USVI territorial income tax returns submitted to an IRS office constitute a Federal income tax return for purposes of section 6501), we conclude that the delay in respondent’s request to amend his answer is not unjustified. Moreover, petitioner’s counsel concedes that any prejudice is largely negated given that the case is not presently set for trial. Considering all the circumstances, the Court will grant respondent’s motion.

Upon due consideration and for cause, it is

ORDERED that respondent’s Motion for Leave to File Out of Time Amendment to Answer, filed June 15, 2018, is granted. It is further

ORDERED that the Clerk of the Court shall file respondent’s First Amendment to Answer, lodged June 15, 2018, as of the date of this Order.

**(Signed) Daniel A. Guy, Jr.  
Special Trial Judge**

Dated: Washington, D.C.  
August 30, 2018