

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

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| MARY A. ZEGEER & M. SCOTT ZEGEER, | ) |                        |
|                                   | ) |                        |
| Petitioners,                      | ) |                        |
|                                   | ) |                        |
| v.                                | ) | Docket No. 25533-17SL. |
|                                   | ) |                        |
| COMMISSIONER OF INTERNAL REVENUE, | ) |                        |
|                                   | ) |                        |
| Respondent                        | ) |                        |
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**ORDER AND ORDER TO SHOW CAUSE**

This is a collection review case, filed pursuant to section 6330(d).<sup>1</sup> Presently pending before the Court is respondent’s Motion For Summary Judgment, filed August 9, 2018, pursuant to Rule 121. On that same date respondent also filed in support of his motion the Declaration Of Elizabeth N. Grant, the settlement officer (SO) who conducted petitioners’ collection due process (CDP) hearing. Pursuant to the Court’s Order dated August 9, 2018, petitioners filed with the Court, on August 31, 2018, a Response, objecting to the granting of respondent’s motion, and the Declarations Of M. Scott Zegeer and Mary A. Zegeer in support of their Response.

In his Motion For Summary Judgment, respondent asks the Court to sustain a Notice Of Determination Concerning Collection Action(s) Under Section 6320 And/Or 6330 dated November 6, 2017 (notice of determination). The notice of determination relates to a Notice Of Intent To Levy And Notice Of Your Right To A Hearing dated March 14, 2017 (levy notice). Respondent’s collection division

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

issued the levy notice in respect of petitioners' outstanding tax liabilities for the taxable (calendar) years 2010, 2011, 2012, 2013, and 2014 (years in issue).

Insofar as the Court's jurisdiction is concerned, there is no dispute between the parties that the years in issue are the only years at issue in the present case. However, the disposition of the respondent's motion requires that certain other taxable years (namely, Ms. Zegeer's 2001 and 2002 taxable years and petitioners' 2015 and 2016 taxable years) be considered.

In their Response to respondent's motion, petitioners contend that the total amount of their income tax liability for the years in issue is incorrect;<sup>2</sup> that Ms. Zegeer's 2001 and 2002 account balances do not accurately reflect the Court's Decision at Dkt. No. 18573-10S entered August 31, 2011, in a prior collection review action involving those years; that petitioners' 2015 joint Federal income tax overpayment was inaccurately applied to Ms. Zegeer's 2002 separate Federal income tax liability, instead of to petitioners' 2010 and/or 2011 joint Federal income tax liabilities; and that the installment agreement proposed by respondent's SO overstated petitioners' total tax liabilities for the years in issue. Petitioners also contend that "the IRS also took petitioners['] 2016 tax refund and applied [it] to the petitioner wife's 2002 uncorrected tax liability after the 120 month collection period had expired" and that Ms. Zegeer's 2001 and 2002 liabilities were fully paid. Finally, petitioners contend that Mr. Zegeer should not be responsible for Ms. Zegeer's 2001 and 2002 Federal income tax liabilities when those liabilities were solely those of Ms. Zegeer, and that Mr. Zegeer is entitled to an allocable portion of the couple's 2015 (and their more modest 2016) overpayments, which portions should be available as a credit offset to petitioners' joint Federal income tax liabilities for 2010 and/or 2011.

#### A. Ms. Zegeer's 2001 and 2002 Separate Liabilities

The Court's Decision entered August 31, 2011, at Dkt. No. 18573-10S provides in relevant part "[t]hat there is no addition to tax for 2001 under [section] 6651(a)(1); and [t]hat the 2001 income tax imposed on [Ms. Zegeer] by the Internal Revenue Code is \$4,448; and [t]hat the 2002 income tax imposed on [Ms. Zegeer] by the Internal Revenue Code is \$3,878."

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<sup>2</sup> Respondent, however, contends that petitioners did not dispute the existence or amount of the liabilities for the years at issue during the CDP hearing.

After reviewing Ms. Zegeer’s transcripts of account for 2001 and 2002 during the CDP hearing, the SO informed petitioners that although she “agree[d] that the adjustments per the [August 31, 2011] Decision document had not been made [in respondent’s records and transcripts], there would still be balances due on the years 2001 and 2002 and that no payments have ever been made toward these years.” Because there was no proof of voluntary payments relating to 2001 and 2002, the SO determined that the credit offset from 2015 would not be available to be applied to any of the years in issue and that the offset should remain applied to Ms. Zegeer’s 2002 liability, which liability would completely “absorb” the offset.

In his Motion For Summary Judgment respondent asserts that the adjustments for 2001 and 2002 “are being made administratively to match the stipulated Decision document entered on August 31, 2011.” However, despite the passage of years, transcripts for Ms. Zegeer’s taxable years 2001 and 2002 do not yet reflect those adjustments.

As of July 9, 2018, pertinent transcripts of account reflected the following balances:

| <u>Return</u> | <u>Year</u> | <u>Balance</u> |
|---------------|-------------|----------------|
| Ms. Zegeer    | 2001        | \$8,446.39     |
| Ms. Zegeer    | 2002        | 3,990.65       |
| Joint         | 2010        | 3,014.35       |
| Joint         | 2011        | 4,024.19       |
| Joint         | 2012        | 12,802.51      |
| Joint         | 2013        | 289.51         |
| Joint         | 2014        | 3,295.95       |

As previously stated, Ms. Zegeer’s transcripts of account for 2001 and 2002 do not include the adjustments called for in the August 31, 2011 Decision. However, those transcripts reflect other adjustments made prior to the entry of the Court’s August 31, 2011 Decision. Thus, the 2001 transcript reflects an abatement of tax in the amount of \$1,397, on September 15, 2008; abatements of a late-filing penalty in the amounts of \$1,032.52 and \$314.33 on April 16, 2007, and September 15, 2008, respectively; and an abatement of a failure-to-pay penalty in the amount of \$1,147.25 on September 1, 2014. As a result of these adjustments, the late-filing penalty, which was originally assessed on April 16, 2007, and the failure-to-pay tax penalty, which was also originally assessed on April 16, 2007, appear to have been fully abated, leaving no remaining liability for either addition

to tax.<sup>3</sup> The tax assessed for 2001, however, is not consistent with the Court's Decision.<sup>4</sup>

Ms. Zegeer's 2002 transcript reflects, on January 5, 2009, an abatement of tax in the amount of \$1,410 and an abatement of a late-filing penalty in the amount of \$317.25. The tax assessed for 2002 is not consistent with the Court's Decision.<sup>5</sup> The 2002 transcript also reflects that 2015 and 2016 overpayment credits in the amounts of \$4,179.71 and \$191, respectively, were applied to the 2002 balance.

To reiterate: Petitioners claimed the following overpayments on their 2015 and 2016 joint Federal income tax returns, which respondent applied to Ms. Zegeer's 2002 tax liability:

| <u>Return</u> | <u>Year</u> | <u>Overpayment</u>      |
|---------------|-------------|-------------------------|
| Joint         | 2015        | \$4,179.71 <sup>6</sup> |
| Joint         | 2016        | 191.00                  |

It is unclear from the record exactly how much Ms. Zegeer might owe for 2001 and 2002 if the adjustments called for by the Court's August 31, 2011

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<sup>3</sup> To that extent, the July 16, 2018 transcript for 2001 appears to be consistent with the August 31, 2011 Decision specifying that "there is no addition to tax for 2001 under [section] 6651(a)(1)".

<sup>4</sup> Thus, \$7,479 less \$1,397 of tax abated on September 15, 2008 equals \$6,082. This amount exceeds "the tax imposed on [Ms. Zegeer] by the Internal Revenue Code" for 2001, as reflected in the Court's August 31, 2011 Decision, i.e., \$4,448. Lest there be any confusion, Ms. Zegeer is entitled to a credit against the tax imposed by the Internal Revenue Code for withholding in the amount of \$1,493. And, of course, Ms. Zegeer remains liable for statutory interest on unpaid tax.

<sup>5</sup> Thus, \$5,963 less \$1,410 of tax abated on January 5, 2009 equals \$4,553. This amount exceeds "the 2002 income tax imposed on [Ms. Zegeer] by the Internal Revenue Code", as reflected in the Court's August 31, 2011 Decision, i.e., \$3,878. Again Ms. Zegeer is entitled to a credit against the tax imposed by the Internal Revenue Code for withholding in the amount of \$1,162, and Ms. Zegeer remains liable for statutory interest on unpaid tax.

<sup>6</sup> Petitioners contend that the overpayment on their 2015 return was \$4,696.82. The record is not clear why only a lesser amount was applied to Ms. Zegeer's separate liability for 2002. On Notice CP49 dated November 28, 2016, respondent informed petitioner that the \$4,179.71 overpayment for 2015 was applied to 2002 and that there was remaining balance of \$4,696.82 for 2002.

Decision were properly reflected in her transcripts for those years.<sup>7</sup> For that reason it is also unclear from the record whether any portion of the 2015 or 2016 overpayments would remain as offsets for petitioners' 2010 and/or 2011 joint Federal income tax liabilities.

In addition to the foregoing, there is also not any information in the record reflecting whether the balances on Ms. Zegeer's 2001 and 2002 liabilities were "fully paid in 2011" following the "Tax Court settlement for the 2002 tax year" and whether "a payment was made to the IRS attorney in 2011", as alleged by petitioners.

Finally, petitioners contend that "[i]n December of 2017, \* \* \* the IRS also took petitioners['] 2016 tax refund and applied [it] to the petitioner wife's 2002 uncorrected tax liability after the 120 month collection period had expired."

#### B. Injured Spouse Claim

As previously stated, petitioners also contend that Mr. Zegeer is not responsible for Ms. Zegeer's 2001 and 2002 separate Federal income tax liabilities and that, for such reason, Mr. Zegeer is entitled to an allocable portion of petitioners' 2015 (and 2016) overpayments. Although the Attachment to the notice of determination states that "[t]he [SO] investigated the issue of the overpayment/refund offset from 2015 applied to the 2002 balance", the record does not include what analysis, if any, the SO performed in evaluating Mr. Zegeer's injured spouse allocation claim. The record includes Mr. Zegeer's 2015 Form 8379, Injured Spouse Allocation, but the record suggests that the SO may not have considered it or did not otherwise take any action. Finally, although the record does not include a Form 8379 for 2016 for Mr. Zegeer, the record suggests that a claim for an injured spouse allocation was also made for that year.

In order to more fully develop the record, it is hereby

ORDERED that respondent shall, on or before October 12, 2018, supplement his aforementioned Motion For Summary Judgment and address both petitioners' contentions relating to Mr. Zegeer's injured spouse allocation for 2015 and 2016 and petitioners' contention that the statute of limitations bars collection

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<sup>7</sup> The balance due for 2001 would presumably include tax and statutory interest, whereas the balance due for 2002 would presumably include tax, applicable additions to tax, and statutory interest.

of Ms. Zegeer's separate liabilities for 2002 and/or 2001. Respondent shall also attach as exhibits to such supplement plain-English and current transcripts of account (Forms 4340) for petitioners' accounts for 2015 and 2016, and for 2017 if a return has been filed for the latter year (and if so, whether any overpayment that might be claimed thereon is subject to an injured spouse allocation). Further, respondent shall attach as exhibits to such supplement updated transcripts of account (Forms 4340) reflecting the implementation of the Court's August 31, 2011 Decision insofar as Ms. Zegeer's taxable years 2001 and 2002 are concerned. If such updated transcripts are not then available, respondent shall set forth the meaning and significance of the abatements appearing on the existing transcripts for Ms. Zegeer's taxable years 2001 and 2002 and respondent's best estimate of the liability remaining unpaid for each such year. It is further

ORDERED that petitioners shall, on or before October 12, 2018, produce copies of documentation such as cancelled checks, invoices, acknowledgments, statements of account, etc., demonstrating the payment, as alleged by them, of all or any part of Ms. Zegeer's 2001 and 2002 separate Federal income tax liabilities. Petitioners are advised that without such documentation, any allegation regarding full payment of Ms. Zegeer's 2001 and 2002 separate liabilities carries little, if any, weight. It is further

ORDERED that petitioner and respondent shall each, separately and on or before October 12, 2018, show cause in writing why the Court should not, on its own motion, remand this case to respondent's Appeals Office for the purpose of addressing the proper application of petitioners' subsequent-year overpayments, the adjustment of Ms. Zegeer's 2001 and 2002 separate account balances, and Mr. Zegeer's injured spouse claims, as well as further consideration of petitioners' interest in a collection alternative in the form of an installment agreement.

**(Signed) Robert N. Armen**  
**Special Trial Judge**

Dated: Washington, D.C.  
September 14, 2018