

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

LAURI DENISE JOHNSON &	)	
DAVID MICHAEL ROBERSON,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 22224-17 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

On September 28, 2018, petitioners filed an amended petition (Doc. 26). The amended petition is subject to being stricken, because it is problematic in three respects:

First, the time has passed within which petitioners might file an amended petition as a matter of right. Instead, they may make such a filing only by leave of the Court. See Rule 41(a). Leave to file should be requested by motion, but petitioners’ filed no motion for leave.

Second, the amended petition is apparently unnecessary. It appears that the specific allegations in the amended petition already fall within the general allegations in the amendment to petition filed September 10, 2018 (Doc. 18), so that the amended petition apparently does not expand the scope of the case.

Third, the amended petition may be moot. Respondent has conceded “that petitioners may contest their underlying liability for taxable year 2013 in this Tax Court case” (Doc. 25 at 3), thus conceding the effect of petitioners’ prevailing on the allegations they have newly asserted.

However, in order to grant the petitioners the maximum latitude, it is

ORDERED that leave is granted to petitioners to file their amended petition, and the record shall continue to reflect its filing as of September 28, 2018.

We point out that petitioners' new allegations appear to be oriented toward showing that the IRS's Office of Appeals abused its discretion in declining to entertain petitioners' challenge to their underlying liability. If petitioners were to prevail in establishing those allegations, it appears that the available remedies would be (1) a remand to Appeals for a proper CDP hearing (which respondent proposed but petitioners have declined), or (2) proceeding to a trial de novo before this Court on the issue of petitioners' underlying liability. We have already granted that second remedy by our order of September 27, 2018 (Doc. 24), directing that this case will proceed to trial as scheduled. Petitioners' pretrial memorandum states that "petitioners are not reluctant to present substantiating records to the court if a legal basis for the liability claim has been established. Petitioners do not believe that standard has been met." If we understand this statement, it may reflect a misunderstanding of the burdens of production and proof in this case. The statutory notice of deficiency ("SNOD") that the IRS alleges it mailed to petitioners (and that petitioners say they did not receive) determined a deficiency in income tax. (It also determined a penalty under section 6662(a), but respondent concedes that issue in his pretrial memorandum. See Doc. 25 at 2.) In an income tax liability challenge in this posture, the IRS's determination in a duly mailed SNOD is presumed correct (even if it is not received), and the burden is on the CDP petitioner to demonstrate the respects in which the SNOD is not correct. To carry this burden, petitioners will need to present evidence, either by way of including it in the joint stipulation of the parties (which becomes part of the trial record pursuant to Rule 91(c), sentence 2) or by offering the evidence unilaterally when they put on their case at the trial.

**(Signed) David Gustafson**  
**Judge**

Dated: Washington, D.C.  
October 3, 2018