

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PAMELA E. VEAL-HILL,

Petitioner

v.

Docket No. 1517-17.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

ORDER AND DECISION

In this Order, we refer to the petitioner as Veal-Hill. We refer to the respondent as the IRS. All section references are to the Internal Revenue Code in effect for the years at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Background

Veal-Hill filed federal tax returns for tax years 2013 and 2014. The IRS examined the returns.

On or about July 19, 2016, the IRS issued 30-day letters showing the IRS's proposed changes resulting from the examination. The letters indicated that if Veal-Hill did not agree with the proposed changes, she could file a written protest with the Office of Appeals. Veal-Hill did not respond to the 30-day letters.

On December 8, 2016, the IRS mailed Veal-Hill a notice of deficiency determining a deficiency of \$49,574 for 2013, a section 6662(a) penalty of \$9,914.80 for 2013, a deficiency of \$20,291 for 2014, and a section 6662(a) penalty of \$4,058.20 for 2014.

On January 23, 2017, Veal-Hill filed a timely petition with the Tax Court for redetermination of the deficiencies and penalties for 2013 and 2014.

On January 22, 2018, Veal-Hill and the IRS filed a stipulation of settled issues that stated that it was a "binding settlement resolving all of the issues in the

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case, except for petitioner's claim for litigation and administrative costs pursuant to T.C. Rule 231." As part of the stipulation of settled issues, Veal-Hill and IRS counsel agreed that the deficiency for 2013 was \$294, the deficiency for 2014 was \$262, and that no penalties were due for 2013 or 2014.

On March 19, 2018, the IRS filed a motion for entry of decision. The IRS requested the Court enter a decision in the amounts agreed to in the January 22, 2018 stipulation of settled issues. The Court reserved ruling on the motion for entry of decision.

On June 25, 2018, Veal-Hill filed a motion for reasonable litigation or administrative costs. In her motion she sought to recover, under section 7430, \$44,368.50 in costs of the litigation of her case in the Tax Court. In her motion she also sought recovery under the common-law tort of intentional infliction of emotional distress. She alleged that the IRS intentionally inflicted emotional distress on her through the examination and the notice of deficiency.

On August 24, 2018, the IRS filed a response to Veal-Hill's motion for reasonable litigation or administrative costs. In part III.B of the response, the IRS contended that Veal-Hill cannot recover reasonable litigation costs under section 7430 because she had not exhausted her administrative remedies as required by section 7430(b)(1). In particular, the IRS contended that Veal-Hill failed to file a written protest in response to the 30-day letters that were issued to her. In part IV of the response, the IRS contended that the Tax Court does not have jurisdiction over Veal-Hill's claim for intentional infliction of emotional distress.

On September 5, 2018, Veal-Hill filed an amendment to her June 25, 2018 motion. In this amendment, Veal-Hill stated that she sought \$896,553.69 of damages, an amount that included the \$44,368.50 she sought for the costs of litigation of her case in the Tax Court.

On October 4, 2018, the IRS filed an amended answer to Veal-Hill's September 5, 2018 amendment. The IRS stated again that the Court does not have jurisdiction over Veal-Hill's claim for intentional infliction of emotional distress.

On March 4, 2019, the Court ordered Veal-Hill to file a reply to the IRS's August 24, 2018 response. The Court required Veal-Hill's reply to be limited to "whether petitioner has satisfied section 7430(b)(1)." The order explained the reason for the limitation:

On August 24, 2018, the IRS filed a response to Veal-Hill's motion for reasonable litigation or administrative costs. In part III.B of the response, the IRS contended that Veal-Hill cannot recover reasonable litigation costs under section 7430 because she did not exhaust her administrative remedies as required by section 7430(b)(1). In particular, the IRS contended that Veal-Hill failed to file a written protest in response to the 30-day letter¹ that was issued to her at the end of the examination.

And:

Veal-Hill cannot recover reasonable litigation costs unless section 7430(b)(1) is satisfied. The Court desires Veal-Hill to address this threshold issue before it considers any other aspect of her motion for reasonable litigation or administrative costs.

The reply was due April 4, 2019.

On April 4, 2019, Veal-Hill filed a motion essentially asking for a continuance of the April 4, 2019 deadline for her to file her reply regarding section 7430(b)(1). Attached to the motion was a letter Veal-Hill had written to the IRS on April 2, 2019, two days before the motion was filed, titled "Protest and Request for Appeals Conference". The letter stated that "the Petitioner's Forms 1040 for the calendar years 2013 and 2014 are the subject of this Protest and Request". The letter also stated that "Petitioner verily believes that she is entitled to each item that is contained in her Motion for Attorney's Fees Pursuant to Internal Revenue Code § 7430 and Intentional Infliction of Emotional Distress and Other Relief." Thus, Veal-Hill's April 2, 2019 letter asked the IRS to do two things: first, to consider her tax liabilities for 2013 and 2014 (even though IRS counsel had already settled the liabilities through the January 22, 2018 stipulation of settled issues) and second, to consider the merits of her claim for litigation costs (even though this claim was pending before this Court in the form of her June 25, 2018 motion).

¹In actuality there were two 30-day letters, one for the 2013 year, and one for the 2014 year.

Discussion

Section 7430(a) provides that the prevailing party in any federal tax proceeding may be awarded reasonable administrative costs and reasonable litigation costs. However, section 7430(b)(1) provides that no judgment for reasonable litigation costs may be awarded in any court proceeding unless the court determines that the prevailing party has exhausted administrative remedies within the IRS.

Rule 231(a)(2) provides:

Where a party has substantially prevailed * * * and wishes to claim reasonable litigation or administrative costs, and there is no agreement as to that party's entitlement to such costs, a claim shall be made by motion filed * * * (C) after the parties have settled all issues in the case other than litigation and administrative costs.

The IRS argued that Veal-Hill's failure to file a written protest with the IRS in response to the July 19, 2016 30-day letters meant that Veal-Hill had failed to exhaust her administrative remedies. Veal-Hill's April 4, 2019 court paper does not address argument directly. Instead it suggests that Veal-Hill's April 2, 2019 "Protest and Request for Appeals Conference" is an attempt to seek her administrative remedies for the adjustments proposed in the 30-day letter. Such a suggestion is wrong. There are no longer any administrative remedies available to Veal-Hill. Her case before this Court involved the issues of the correct amount of deficiencies and penalties for tax years 2013 and 2014. These issues have been resolved by the January 22, 2018 stipulation of settled issues. There is nothing further for the administrative agency to remedy. We therefore hold that Veal-Hill did not exhaust the administrative remedies available to her within the IRS. This precludes her from any recovery of litigation costs. See sec. 7430(b)(1). Therefore, we will deny Veal-Hill's June 25, 2018 motion, which seeks litigation costs under section 7430(a)(2).

(Although her June 25, 2018 motion also seeks damages under the common-law tort of intentional infliction of emotional distress, we do not have jurisdiction over that claim. See sec. 7442; Chocallo v. Commissioner, T.C. 2004-152, at 6-7.)

It is

ORDERED that petitioner's December 20, 2017 motion for leave to file petition for attorneys' fees is granted nunc pro tunc as of May 7, 2018. It is further

ORDERED that petitioner's June 25, 2018 motion for reasonable litigation or administrative costs is denied. It is further

ORDERED that petitioner's April 4, 2019 motion for leave to file reply to respondent's response to motion for reasonable litigation or administrative costs is denied. It is further

ORDERED that respondent's March 19, 2018 motion for entry of decision is granted; and it is

ORDERED and DECIDED that there are deficiencies due from petitioner for the taxable years 2013 and 2014, in the amounts of \$294 and \$262, respectively; and

That there are no penalties due from petitioner, under the provisions of I.R.C. § 6662(a), for the tax years 2013 and 2014.

**(Signed) Richard T. Morrison
Judge**

ENTERED: **APR 24 2019**