



United States Tax Court

Washington, DC 20217

JOSEPH MILTON,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 19188-23

ORDER

On January 24, 2024, respondent filed in the above-docketed case a Motion to Dismiss for Lack of Jurisdiction as to Taxable Year 2015 on the ground that no deficiency in tax has been determined for 2015, nor had respondent made any other determination with respect to that tax year that would confer jurisdiction on the Court. Petitioner objects to the granting of this motion.

Like all federal courts, the Tax Court is a court of limited jurisdiction. We may exercise jurisdiction only to the extent expressly provided by statute. *Naftel v. Commissioner*, 85 T.C. 527, 529 (1985). I.R.C. section 7442 does not provide this Court with jurisdiction to review all tax-related matters. In addition, jurisdiction must be proven affirmatively, and a taxpayer invoking our jurisdiction bears the burden of proving that we have jurisdiction over the taxpayer's case. *See Fehrs v. Commissioner*, 65 T.C. 346, 348 (1975); *Wheeler's Peachtree Pharmacy, Inc. v. Commissioner*, 35 T.C. 177, 180 (1960). In a deficiency case, this Court's jurisdiction depends on the issuance of a valid notice of deficiency and the filing of a petition by the petitioner. *Hallmark Rsch. Collective v. Commissioner*, 159 T.C. 126 (2022); *Monge v. Commissioner*, 93 T.C. 22, 27 (1989); *Normac, Inc. v. Commissioner*, 90 T.C. 142, 147 (1988).

On December 5, 2023, the Petition was filed to commence this case. Therein petitioner disputed a notice of deficiency issued November 15, 2023, which determined deficiencies of \$0, \$97,060, and \$2,343,921 for tax years 2015, 2016, and 2017, respectively. The notice explains that for tax year 2015, respondent adjusted petitioner's income to reflect changes to petitioner's method of accounting under I.R.C. section 481. Specifically, for 2015, petitioner's income was decreased by a total of \$5,080,558 in deductions flowing from a pass-through entity owned by petitioner, and then increased by the same amount under I.R.C. section 481. The result was that, for tax year 2015, there was a \$0 adjustment to petitioner's income, a \$0 increase in tax, and a \$0 balance due.

Respondent asserts that there is no deficiency in income tax due from petitioner for tax year 2015, as defined by I.R.C. section 6211, and thus the notice of deficiency was not authorized, as to tax year 2015, by I.R.C. section 6212.

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Consequently, respondent argues that there is no valid notice of deficiency, and thus no basis for a petition to this Court, concerning petitioner's 2015 tax year. See I.R.C. section 6213(a); *Hallmark Rsch. Collective*, 159 T.C. at 139.

Petitioner objects to respondent's motion. He argues that respondent's change to his method of accounting under I.R.C. section 481 for tax year 2015 was itself a determination that this Court has jurisdiction to review. Further, petitioner argues that the issuance of a notice of deficiency, with or without "an actual monetary deficiency," is sufficient to grant this Court jurisdiction under I.R.C. sections 6212 and 6213(a).

Petitioner's arguments fail. The term "deficiency" is defined in I.R.C. section 6211(a) as the amount by which tax due exceeds the excess of the sum of "the amount shown as the tax by the taxpayer upon his return" (provided that a return showing an amount has been filed) plus previously assessed deficiencies over rebates made. Here, respondent has decreased petitioner's income for tax year 2015, but then has offset that decrease by an increase of the same amount. When respondent makes adjustments to a taxpayer's income which are completely offset by other adjustments, such that the I.R.C. section 6211 deficiency calculation indicates no additional tax due for that year, the Court lacks jurisdiction. See *Martz v. Commissioner*, 77 T.C. 749 (1981).

Although petitioner may disagree with respondent's I.R.C. section 481 adjustment, this adjustment did not result in a deficiency under I.R.C. section 6211. The Court's jurisdiction in matters such as this one depends upon the determination of a "deficiency" as that term is defined in I.R.C. section 6211. As petitioner has not demonstrated that he was issued a valid notice of deficiency with respect to tax year 2015, or that respondent has made any other determination sufficient to confer jurisdiction on this Court as to that tax year, we are obliged to dismiss so much of this case as pertains to 2015 for lack of jurisdiction. The Court has considered all the other contentions of the parties and, to the extent not discussed above, finds those arguments to be irrelevant, moot, or without merit.

Upon due consideration of the foregoing, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction as to Taxable Year 2015 is granted and so much of this case as pertains to 2015 is dismissed for lack of jurisdiction.

(Signed) Zachary S. Fried
Special Trial Judge