Current Federal Tax Developments

Week of June 20, 2022

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WEEK OF JUNE 20, 2022

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APPLICATION OF FORECLOSURE PROCEEDS COULD CREATE DEDUCTIBLE INTEREST EXPENSE, BUT TAXPAYER FAILED TO SHOW IT ACTUALLY DID SO

Howland v. Commissioner, TC Memo 2022-60, 6/13/22

The Tax Court had to look at a taxpayer's attempt to claim a deduction for interest paid on a home equity credit line by the application of funds when the property was foreclosed in the case of *Howland v. Commissioner*, TC Memo 2022-60.[1] And the Tax Court found that the answer isn't quite as clear as you might expect at first glance.

Facts of the Taxpayer's Case

This case revolves around a taxpayer who had two loans secured by his residence that ended up in foreclosure. A first mortgage was held by Bank of New York Mellon, as successor in interest to Countrywide Home Loans while a second mortgage was held by CenterState Bank. The total amounts outstanding on the loans at the time of the foreclosure for the principal, interest and fees on both loans was $624,106.

The opinion describes the case as follows:

> In June 2014 First Southern Bank merged with CenterState Bank. Since petitioners had not made any payments on the Haven Trust Bank credit agreement, First Southern Bank filed a verified complaint for foreclosure (foreclosure complaint) in the Seventh Judicial Circuit Court for St. Johns County, Florida (circuit court). When the foreclosure complaint was filed, petitioners owed $377,060 in principal on the credit agreement, plus accrued interest, fees, and other charges. In the foreclosure action First Southern Bank sought an award from the circuit court for the full amount due from petitioners, including the right to foreclose on petitioners' residence based on the granted credit agreement.
>
> As part of the foreclosure complaint, the circuit court entered a summary final judgment, resulting in a foreclosure sale of petitioners' residence on July 28, 2016. CenterState Bank was the highest bidder at the foreclosure sale and acquired the residence with a bid of $321,000. At the time of the foreclosure sale, the sum of the accrued interest on the credit agreement was $100,607.

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[1] *Howland v. Commissioner*, TC Memo 2022-60, June 13, 2022, https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/home-mortgage-interest-deduction-denied-after-foreclosure/7dkn3 (retrieved June 14, 2022)

> On June 9, 2016, a second foreclosure complaint regarding petitioners' residence was filed in the circuit court by the first mortgage holder, Bank of New York Mellon, as successor in interest to Countrywide Home Loans. Bank of New York Mellon claimed a balance due of principal, interest, late charges, attorney's fees, and other permitted expenses of $247,046.
>
> On December 30, 2016, CenterState Bank sold petitioners' residence to third parties for $594,000. No Internal Revenue Service (IRS) Form 1098, Mortgage Interest Statement, was issued to petitioners for tax year 2016 for the home mortgage interest in question. There is no evidence in the record as to how the sale proceeds of $594,000 were applied to petitioners' debts with First Southern Bank and Bank of New York Mellon.[2]

The taxpayers claimed over $100,000 of mortgage interest deductions for the year of the foreclosures, a year in which the only payment on the notes came from the foreclosure transactions.

Tax Court Analysis

The Court's summary of the positions of the parties reads as follows:

> Petitioners argue that the foreclosure of their mortgage constituted a taxable sale or exchange. Next, petitioners contend the fair market value of the residence is equal to the price that a willing buyer paid shortly after the foreclosure. On the basis of the terms of the credit agreement, petitioners contend the amount CenterState Bank received in the foreclosure proceedings and specifically in the subsequent sale to a third party should be applied first to their outstanding interest owed, and then to principal. …
>
> On the other hand, respondent argues that petitioners are not entitled to the home mortgage interest deduction claimed on their 2016 Form 1040. According to respondent, the foreclosure bid did not cover the principal balance due from petitioners to CenterState Bank, after payment of the first mortgage balance due to Countrywide Home Loans. Accordingly, no interest amount was paid to CenterState Bank at the time of the foreclosure sale.[3]

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[2] *Howland v. Commissioner*, TC Memo 2022-60, June 13, 2022

[3] *Howland v. Commissioner*, TC Memo 2022-60, June 13, 2022

There is no question that if the interest in question was paid, it was otherwise home mortgage interest deductible on Schedule A. But the key question was if interest had actually been paid on the second mortgage.

The Tax Court summarized the general rule for applying payments on the mortgage, as well as the impact of a foreclosure:

> The general rule in this area is that voluntary partial payments made by a debtor to a creditor are, in the absence of any agreement between the parties, to be applied first to interest and then to principal. See *Lackey v. Commissioner*, T.C. Memo. 1977-213, 36 T.C.M (CCH) 890. However, an exception to this general rule exists in the case of an involuntary foreclosure of mortgaged property where the evidence "strongly indicates" that the mortgagor is insolvent at the time of foreclosure. See *Newhouse v. Commissioner*, 59 T.C. 783, 789 (1973).
>
> Rejecting the interest first rule, we held in *Newhouse* and *Lackey* that no portion of the proceeds from either of the foreclosure sales therein was allocable to interest since the debtors were insolvent. While in *Estate of Bowen v. Commissioner*, 2 T.C. 1 (1943), we applied the proceeds from a foreclosure sale to interest first and then to principal where the debtor was not shown to be insolvent and the payments, in spite of foreclosure, were said to be voluntary.[4]

But the court notes that this situation is not exactly like any of the prior cases:

> In this case the payments were not voluntary; however, there is no evidence petitioners were insolvent at the time of the foreclosure. Furthermore, unlike Lackey and Newhouse, this case involves a clear written agreement — namely the credit agreement — between the lender and petitioners that repayments on the note are applied first to interest. Consequently, we find our decisions in Lackey and Newhouse to be distinguishable.[5]

The court notes that the IRS argued that since, once the obligation to the first mortgage holder was satisfied, there wasn't enough funds left to pay off the second mortgage's principal balance, that meant none of the payment would count as interest expense:

> The core dispute in these cases relates to the application of the proceeds from the foreclosure sale of petitioners' home. Respondent does not dispute that the amount realized under the foreclosure proceeding by CenterState was $594,000; rather, respondent contends that petitioners ignore the property's first mortgage of $247,046,

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[4] *Howland v. Commissioner*, TC Memo 2022-60, June 13, 2022

[5] *Howland v. Commissioner*, TC Memo 2022-60, June 13, 2022

> resulting in a net difference of $346,954 — which is less than the principal balance of $377,060 due to CenterState, and consequently petitioners paid no interest.
>
> We agree, in part, with respondent's argument. While respondent is correct that CenterState did not realize the full $594,000, but rather received only $346,954 after the first mortgage was satisfied, we cannot definitively conclude that CenterState received only the payment of principal from petitioners.[6]

The Court outlines how it plans to analyze the matter:

> It is undisputed that the principal balance due to CenterState was $377,060; however — as petitioners argued — under the terms of the credit agreement, delinquent payments were to be first applied to interest due from petitioners, rather than to principal. Therefore, we must analyze the terms of the foreclosure action and its tax implications here.
>
> Per the judgment issued by the circuit court, the total amounts due included principal of $377,060, interest computed to March 8, 2016, of $65,482, appraisal fees of $650, and deferred interest of $26,139. These four amounts total $469,331. At the time of the foreclosure sale, the sum of the accrued and deferred interest on the credit agreement equaled $100,607. Petitioners contend that CenterState, as successor in interest and holder of the promissory note, was contractually bound to apply the foreclosure proceeds first to interest and second to principal. Respondent, however, argues that these payment provisions found in the promissory note are not applicable here in the context of a foreclosure sale.[7]

While the analysis seems like it may come out in the taxpayers' favor, the Court eventually found that the taxpayer failed to carry the burden of proof:

> The record before us is silent as to how CenterState applied the funds received and whether petitioners owe any remaining principal balance. These facts (if favorable) could support a finding that petitioners in fact paid home mortgage interest (in some amount) — rather than repaying principal balance. However, statements in briefs do not constitute evidence. Rule 143©; *Evans v. Commissioner*, 48 T.C. 704, 709 (1967), *aff'd per curiam*, 413 F.2d 1047 (9th Cir. 1969); *Chapman v. Commissioner*, T.C. Memo. 1997-147; *Berglund v. Commissioner*, T.C. Memo. 1995-536. Pertinent facts missing from the stipulation

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[6] *Howland v. Commissioner*, TC Memo 2022-60, June 13, 2022

[7] *Howland v. Commissioner*, TC Memo 2022-60, June 13, 2022

> merely mean that the party bearing the burden of proof has failed to sustain the burden of showing them. See *Evans*, 48 T.C. at 709.
>
> Petitioners bear the burden of proof and must show, by a preponderance of the evidence, that they are entitled to a home mortgage interest deduction of $103,498, or some other amount. For the reasons discussed above, we conclude that petitioners have failed to meet their burden. Accordingly, we will sustain respondent's determination to disallow this deduction claimed by petitioners.[8]

The Court makes it clear that a deduction is possible in a case like this—but the taxpayer must show more than this taxpayer showed.

NURSE'S COMFORTABLE AND PROFESSIONAL CLOTHING WORN OUTSIDE THE OPERATING ROOM FOUND TO BE A DEDUCTIBLE BUSINESS EXPENSE

Romana v. Commissioner, TC Summary Opinion 2022-9, 6/16/22

The Tax Court found that clothes purchased by a nurse to meet an employer's requirements that she be dressed in comfortable clothes and in a manner that reflected her profession as a nurse qualified as a deductible business expense in the case of *Romana v. Commissioner*, TC Summary Opinion 2022-9.[9]

The Law

While you might be objecting at this point that this case is no longer truly relevant, as the taxpayer claimed an employee business expense deduction that is not available at this point following changes to the law in the Tax Cuts and Jobs Act, the underlying issue is still very relevant for self-employed taxpayers and employers who are considering reimbursing employees for such expenditures or providing similar clothing to the employee to wear in a similar situation.

Clothing as a business expense has always been a bit tricky. The problem is that IRC §262(a) provides:

> (a) General rule. Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

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[8] *Howland v. Commissioner*, TC Memo 2022-60, June 13, 2022

[9] *Romana v. Commissioner*, TC Summary Opinion 2022-9, June 16, 2022, https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/tax-court-says-work-clothes-are-business-expenses-for-nurse/7dl0y (retrieved June 17, 2022)

Note the requirement that any item that is a personal, family or living expense will not be allowed unless *expressly provided* for in this chapter (the income tax provisions of the Internal Revenue Code).

So, this means it's not enough to show the clothing rises to an "ordinary and necessary business expense" under IRC §162, as that is a general allowance which would be barred as a deduction by IRC §262(a) if also a personal, family or living expense.

The question of whether the clothing required to be worn by Maria Romana was not also a personal, family or living expense is what the Court was looking to decide.

Facts of the Case

Maria was employed as a nurse in a Kaiser Permanente (Kaiser) plastic surgery clinic in California. Maria faced the following dress code imposed by Kaiser:

> Kaiser's dress code in effect at the location where she worked required that Mrs. Romana be dressed in "comfortable" clothes and in a manner that reflected her profession as a nurse. Neither Kaiser nor the collective bargaining agreement for her nursing union had a policy that allowed reimbursement for the expenses she incurred to purchase clothing that satisfied her employer's dress code.[10]

The Court described the clothes Maria acquired and wore at her employment:

> While at work, Mrs. Romana wore clothing that resembled scrubs that she purchased at her own expense from local department stores. In the operating room she was required to wear scrubs provided by Kaiser. Routinely, depending upon the operation schedule for any given day, she changed back and forth between her scrublike clothing and the operating room scrubs her employer provided.
>
> During 2017 Mrs. Romana also purchased, at her own expense, a white "lab" coat with "Kaiser Permanente" and her name embroidered on it. The purchase was made as part of a bulk purchase along with similar items purchased by fellow employees. The lab coat cost approximately $45, and it was dry cleaned multiple times during the year.[11]

The IRS challenged these deductions (among others claimed by Maria and her husband) and a Tax Court petition was eventually filed.

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[10] *Romana v. Commissioner*, TC Summary Opinion 2022-9, June 16, 2022

[11] *Romana v. Commissioner*, TC Summary Opinion 2022-9, June 16, 2022

The Tax Court's View

The Tax Court notes the basic issues arising when a taxpayer attempts to claim clothes as a business expense:

> Generally, the cost of a business wardrobe, even if required as a condition of employment, is considered a nondeductible personal expense within the meaning of section 262. See, e.g., *Hynes v. Commissioner*, 74 T.C. 1266, 1290 (1980). Those costs are not deductible even when it has been shown that the particular clothes would not have been purchased but for the employment. *Id*. Clothing costs are deductible as ordinary and necessary business expenses under section 162 only if (1) the clothing is of a type specifically required as a condition of employment, (2) it is not adaptable to general use as ordinary clothing, and (3) it is not so worn. See *Yeomans v. Commissioner*, 30 T.C. 757, 767 (1958); see also *Deihl v. Commissioner,* T.C. Memo. 2005-287.[12]

Note that it's not enough for a taxpayer to claim that they would never actually wear such clothing except in a business setting. Their personal preferences in clothing aren't enough to make clothing that reasonably could be worn as ordinary clothing by those not in a business setting deductible.

Similarly, the mere fact that clothes could, theoretically, be worn in a non-business setting does not convert otherwise clearly business clothing into a nondeductible expense.

The Tax Court, in what is always going to be a very fact specific holding, found that these particular clothes met the requirements to qualify as a business expense:

> Mrs. Romana was required to dress professionally and comfortably for her job as a nurse. To do so, she purchased shirts and pants at department stores. Because the clothing resembled scrubs, we find that the clothing was not adaptable to general use as ordinary clothing outside of her employment. Consequently, the cost of the clothing and the cost to dry clean the clothing are deductible. Mrs. Romana also purchased a white lab coat with "Kaiser Permanente" and her name embroidered on it. This lab coat was not appropriate for general use.[13]

The Tax Court allowed the expenses related to the clothes (costs to acquire them and cleaning expenses) to be treated as deductible expenses for tax purposes.

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[12] *Romana v. Commissioner*, TC Summary Opinion 2022-9, June 16, 2022

[13] *Romana v. Commissioner*, TC Summary Opinion 2022-9, June 16, 2022

INNOCENT SPOUSE RELIEF NOT AVAIALBLE FOR TRUST FUND PENALTY LIABILITY

Chavis v. Commissioner, 158 T.C. No. 8, 6/15/22

In the case of *Chavis v. Commissioner,*[14] 158 T.C. No. 8, Angela Chavis argued, in part, that she should not be liable to pay a portion of a trust fund penalty under IRC §6672 because she should qualify for innocent spouse relief. The Tax Court denied her requested relief, finding that the innocent spouse provisions only apply to amounts due on joint income tax returns.

Underlying Law

The amounts the IRS sought to collect from Angela in this case were unpaid payroll taxes for which the IRS had found her and her ex-husband to qualify as *responsible parties* under IRC §6672. IRC §6672(a) provides generally:

> (a) General rule. Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 or part II of subchapter A of chapter 68 for any offense to which this section is applicable.

One argument Angela made in her case before the Tax Court was that if there was such a liability, she should qualify for relief as an *innocent spouse* under IRC §6015, with her former spouse being held entirely liable for the unpaid amount of the tax. IRC §6015(a) reads:

> (a) In general. Notwithstanding section 6013(d)(3)--
>
> > (1) an individual who has made a joint return may elect to seek relief under the procedures prescribed under subsection (b); and
> >
> > (2) if such individual is eligible to elect the application of subsection (c), such individual may, in addition to any election under paragraph (1), elect to limit such individual's

[14] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022, https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/lien-upheld-for-trust-fund-penalties%3b-spousal-relief-unavailable/7dkwq (retrieved June 16, 2022)

> liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c).
>
> Any determination under this section shall be made without regard to community property laws.

IRC §6015(f) provide for an equitable relief option and reads:

> (f) Equitable relief.
>
> (1) In general. Under procedures prescribed by the Secretary, if--
>
> (A) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and
>
> (B) relief is not available to such individual under subsection (b) or (c),
>
> the Secretary may relieve such individual of such liability.
>
> (2) Limitation. A request for equitable relief under this subsection may be made with respect to any portion of any liability that--
>
> (A) has not been paid, provided that such request is made before the expiration of the applicable period of limitation under section 6502, or
>
> (B) has been paid, provided that such request is made during the period in which the individual could submit a timely claim for refund or credit of such payment.

The Facts of the Case

The Tax Court provides the following description of how Angela ended up before the Court.

> Petitioner received a B.A. in economics and an M.A. in business administration, having completed coursework in finance, accounting, marketing, management, and organizational behavior. At the relevant times she and her then husband were associated with Oasys Information Systems, Inc. (Oasys), a C corporation established in 2008. Her then husband was the president of Oasys, and she held the

> office of secretary. According to IRS records, Oasys listed petitioner's home address as its business address.
>
> Oasys withheld payroll taxes from its employees' wages but did not pay those taxes over to the Government. Having no success in collecting these taxes from Oasys, the IRS determined penalties against petitioner and her then husband under section 6672. That section provides that "[a]ny person required to collect, truthfully account for, and pay over" payroll taxes, who willfully fails to do so, shall be liable for a penalty "equal to the total amount of the tax evaded . . . or not accounted for and paid over." § 6672(a). Penalties determined under section 6672 are commonly called trust fund recovery penalties (TFRPs).
>
> On July 13, 2015, the IRS issued petitioner Letter 1153, Notice of Trust Fund Recovery Penalty. The IRS sent this letter by certified mail to petitioner at her home address. Respondent has supplied a copy of U.S. Postal Service (USPS) Form 3811, Domestic Return Receipt, showing that petitioner received and accepted delivery of the Letter 1153 on July 16, 2015. Petitioner does not dispute that the signature on the Form 3811 is her signature.[15]

The letter and enclosed Form 2751 informed Angela of the IRS's proposed assessment of the trust fund penalty against her:

> Attached to the Letter 1153 was Form 2751, *Proposed Assessment of Trust Fund Recovery Penalty*. This form advised petitioner that Oasys had failed to pay over employment taxes totaling $146,682 for nine calendar quarters during 2011-2014. The IRS proposed to assess that sum against petitioner, determining that she, "[a]s Secretary, . . . had the responsibility of paying the employment taxes [but] paid other creditors over the US Gov't." The IRS proposed to assess joint and several liability for the same amount against her then husband, determining that he, "[a]s President, . . . had the responsibility of paying the employment taxes [but] paid other creditors over the US Gov't."
>
> The Letter 1153 informed petitioner: "You may appeal your case to the local Appeals Office." The letter included detailed instructions about the steps petitioner needed to take in order to appeal the proposed assessment and the issues that would be considered during the appeal. The letter warned: "If we do not hear from you within 60 days from the date of this letter . . ., we will assess the penalty and begin collection action."

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[15] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

> Petitioner did not appeal the notice of proposed assessment.[16]

Note that the IRS asserted that she, as the corporate secretary (an officer), had responsibility to insure the tax was paid. The agency also asserted, separately, that her husband, as President, had a similar responsibility. Angela did not choose to appeal this matter to argue that she was not a responsible person in this fact pattern despite being a corporate officer.

The IRS therefore moved forward in this matter:

> On November 16, 2015, the IRS accordingly assessed the TFRPs against her. Petitioner and her husband divorced in 2016, and the IRS was apparently successful in collecting a portion of the unpaid tax from him. In an effort to collect the balance of the liability, the IRS on May 16, 2019, issued petitioner a Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing*. This letter showed an aggregate unpaid balance of $126,919 on account of Oasys's payroll tax liability.[17]

Only at this point did Angela decide to formally contest the matter via a Collections Due Process Hearing (CDP):

> On May 29, 2019, petitioner timely requested a CDP hearing. In her hearing request she checked the boxes, "I cannot pay balance" and "Innocent Spouse Relief," and she requested withdrawal of the NFTL. She urged that her ex-husband was responsible for Oasys's payroll taxes, asserted that she "never received a notice for these taxes before," and contended that she "d[id] not make enough income to put a dent in the amount presented."
>
> In July 2019 petitioner submitted Form 8857, *Request for Innocent Spouse Relief*. She sought relief from the TFRPs, alleging that she "had no dealings with Oasys." She stated that she "agreed to sign our 1040 tax return jointly [but] never signed any returns from Oasys." She did not request relief from any joint Federal income tax liability.[18]

Since an innocent spouse claim was being asserted, the matter was first referred to the IRS Cincinnati Centralized Innocent Spouse Operation (CCISO) office which handles the review of such claims:

> The IRS Cincinnati Centralized Innocent Spouse Operation (CCISO) processed petitioner's Form 8857 on July 26, 2019. On August 14,

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[16] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

[17] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

[18] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

> 2019, CCISO informed petitioner that she did not "meet the basic eligibility requirements" for relief under section 6015. CCISO explained that she did not qualify for relief because "[s]ection 6015 applies to jointly filed income tax returns," not payroll tax liabilities.[19]

The CDP process then continued with a telephone conference:

> Petitioner's CDP case was then assigned to a settlement officer (SO) in the IRS Independent Office of Appeals (Appeals) in Houston, Texas. The SO reviewed CCISO's file, verified that the TFRPs had been properly assessed, and confirmed that all other legal and administrative requirements had been met. The SO scheduled a telephone conference for November 19, 2019. Petitioner participated in the telephone conference as scheduled.
>
> During the conference the SO explained that section 6015 relief was not available for TFRP liabilities. The SO also advised that petitioner could not now challenge her liability for the TFRPs because she had, but declined to take advantage of, a prior opportunity to challenge them upon receipt of the Letter 1153. Although petitioner said she did not recall receiving that letter, the SO drew her attention to her signature on the USPS Form 3811, which confirmed her receipt of the proposed assessment.[20]

Eventually the IRS determined that she was not eligible to have her account put on currently not collectible status nor did she qualify for lien withdrawal. Angela filed an appeal with the Tax Court over all of these findings, including denial of innocent spouse relief.

Why No Innocent Spouse Relief?

Angela noted the following in response to an IRS Motion for Summary Judgment in this matter:

> She concedes receiving the Letter 1153 in 2015 but urges that she was undergoing stress at that time in connection with her divorce proceedings. She alleges that she "had no involvement with the business operations of Oasys . . . and did not sign any tax filings associated with the company."[21]

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[19] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

[20] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

[21] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

The Tax Court begins by noting that Angela had a chance to challenge her underlying liability previously but did not take advantage of the opportunity:

> A taxpayer may challenge the existence or amount of her underlying tax liability in a CDP case only if she "did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute" it. § 6330(c)(2)(B). TFRPs are "assessable penalties" and thus are not subject to deficiency procedures. See *Chadwick v. Commissioner*, 154 T.C. 84, 91 (2020). However, a taxpayer has the opportunity to dispute her liability for a TFRP by filing an appeal with the IRS when she receives a Letter 1153. See *Mason v. Commissioner*, 132 T.C. 301, 317-18 (2009); *Lewis v. Commissioner*, 128 T.C. 48, 61 (2007); *Thompson v. Commissioner*, T.C. Memo. 2012-87, 103 T.C.M. (CCH) 1470, 1472; Treas. Reg. § 301.6320-1(e)(3), Q&A-E2.
>
> The IRS sent petitioner a Letter 1153 in July 2015. She acknowledges having received that letter, and the USPS Form 3811 bears her signature. The Letter 1153 informed petitioner of her right to appeal the proposed TFRP assessment and outlined the steps she needed to take. Because she had an opportunity to dispute her TFRP liability upon receipt of the Letter 1153 but declined to do so, she was not entitled to challenge her underlying tax liability at the CDP hearing and may not advance such a challenge in this Court. See Chadwick, 154 T.C. at 89.[22]

It is important to note that her argument that she did not sign any payroll tax forms and was not involved with the business operations of the company were potential defenses to her *personal* liability for the trust fund penalty, arguments that, had she timely contested the matter, she might (or might not) have been able to prevail on, leading to having the potential penalty assessment removed, with only her ex-husband being held liable.

So at this point she can't contest the underlying liability. Now the Tax Court considers whether she has an option to argue she was an innocent spouse that should not be required to pay this amount, even if the liability is not subject to challenge.

The Tax Court analyzes the IRC provision that provides for such innocent spouse relief. The Court first concludes that she is not eligible for relief under either IRC §§6015(b) or (c):

> Section 6015 is captioned "Relief from joint and several liability on joint return." Section 6015(a)(1) provides that "an individual who has made a joint return may elect to seek relief under the procedures

[22] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

> prescribed under subsection (b)," which sets forth procedures "applicable to all joint filers." Section 6015(a)(2) provides that an individual may "elect to limit [her] liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c)," which sets forth procedures applicable for spouses who are legally separated or no longer living together.
>
> Subsections (b) and (c) both specify rules for obtaining relief from liabilities that are shown on (or should have been shown on) a joint Federal income tax return. See § 6015(b)(1)(A) and (B) (presupposing that "a joint return has been made" and that "on such return there is an understatement of tax"); § 6015(c)(1) (providing that a person "who has made a joint return" may be partially relieved of "liability for any deficiency which is assessed with respect to the return").
>
> Petitioner's TFRP liabilities were not shown on, and did not arise from the filing of, a joint Federal income tax return. Rather, her TFRP liabilities arose from her failure to discharge her duty, as an officer of Oasys, to ensure that payroll taxes collected from the company's workers were properly paid over to the Department of the Treasury. Petitioner was therefore not eligible for relief under section 6015(b) or (c).[23]

Her problem was simple—these provisions only apply to tax liabilities arising from a joint federal income tax return per the plain language found in the provisions. The trust fund penalty did not relate to any joint federal income tax return.

However, IRC §6015(f) provides for equitable relief even if relief is not available under either IRC §§6015(b) or (c). Initially this seems promising—assuming she could show that, in fact, she had nothing to do with the business, never signed a return and was unaware of the problem, it might seem inequitable to hold her liable. Conceivably she might have been the corporate secretary in name only, her name provided only to satisfy a state law requirement for a corporation to have a corporate secretary.

The Court describes this provision:

> Subsection (f) provides that "equitable relief" may be afforded to a taxpayer if "relief is not available to such individual under subsection (b) or (c)." § 6015(f)(1). "Under procedures prescribed by the Secretary," such relief may be available if, "taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either)." *Ibid.*[24]

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[23] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

[24] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

The Court refers to Rev. Proc. 2013-34 to note that the IRS has held that equitable relief is only available for income tax liabilities:

> The Commissioner has specified, in Rev. Proc. 2013-34, 2013-43 I.R.B. 397, the procedures governing equitable relief. These procedures confirm that subsection (f), like subsections (b) and (c), applies only to joint income tax liabilities. See Rev. Proc. 2013-34, § 1.01, 2013-43 I.R.B. at 397 ("This revenue procedure provides guidance for a taxpayer seeking equitable relief from income tax liability. . . ."). Indeed, the IRS will not consider a taxpayer's request for equitable relief unless she meets seven "threshold conditions," one of which is that the "income tax liability from which the requesting spouse seeks relief" is attributable to the non-requesting spouse. Id. § 4.01(7), 2013-43 I.R.B. at 399. Another condition is that "[t]he requesting spouse [must have] filed a joint return for the taxable year" for which relief is sought. Id. § 4.01(1).[25]

The Tax Court goes on to agree with the IRS position that such equitable relief only applies to income tax liabilities, noting:

> The IRS assessed TFRPs against petitioner and her ex-husband upon determining that they were both responsible for Oasys's failure to remit payroll taxes to the Government. The IRS did not determine any income tax deficiencies against petitioner and has not attempted to collect any unpaid tax shown on any joint return that she signed. Although a TFRP liability is a form of "unpaid tax," section 6015(f) applies only to unpaid taxes or deficiencies arising from joint income tax returns. See Treas. Reg. § 1.6015-1(a)(1)(iii) (stating that section 6015(f) applies only to "joint and several liability for Federal income tax"); H.R. Rep. No. 105-599, at 254 (1998) (Conf. Rep.), reprinted in 1998-3 C.B. 747, 1008 (stating that section 6015(f) applies only to "any unpaid tax or deficiency arising from a joint return"). The SO therefore did not err when she advised petitioner that innocent spouse relief was not available to her.[26]

Note that IRC §6015(f) itself never states that it only applies to income taxes arising from a joint return. However, it also does not indicate that the provision is not so limited—rather it leaves that open to interpretation. The IRS interpretation that relief is limited to income taxes from a joint return is consistent with the title of the section ("Relief from joint and several liability on joint return"), the fact that the specific relief provisions referenced in the §6015(f) are specifically limited to income taxes arising

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[25] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

[26] *Chavis v. Commissioner,* 158 T.C. No. 8, June 15, 2022

from a joint return, and Congressional committee reports that showed Congress intended this relief to apply only to joint returns.

But those items are only useful if the language of the provision contains some level of ambiguity regarding which taxes the provision covers. In this reported opinion, the Tax Court has determined that sufficient ambiguity exists in the wording to allow the IRS to use that other information to provide for the interpretation that shall apply, an interpretation found in Reg. §1.6015-1(a)(1)(iii) cited in the opinion.