

US TAX COURT
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US TAX COURT
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MAY 1 2020

CRAIG J. SCHIEDER,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

ELECTRONICALLY FILED

Docket No. 4048-20

RESPONDENT'S ANSWER

CERTIFICATE OF SERVICE

UNITED STATES TAX COURT

CRAIG J. SCHIEDER,)
)
 Petitioner,)
)
 v.) Docket No. 4048-20
) Filed Electronically
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

ANSWER

RESPONDENT, in answer to the petition filed in the above-entitled case, without the benefit of the physical administrative file, admits, denies, and alleges, as follows:

1. Admits.
2. Admits.
3. Admits.
4. Admits.

5. & 6. Attached document entitled "ATTACHMENT TO PETITION":

Statement of Facts

1. Admits.
2. Denies that petitioner filed his Federal income tax return for the 2017 tax year ("2017 Tax Return") on December 28, 2018. Denies that the document attached to the petition as "Exhibit A" is a complete copy of petitioner's 2017 Tax Return. Alleges that respondent received petitioner's 2017 Tax Return on

or about December 26, 2018, and that respondent processed petitioner's 2017 Tax Return on or about April 1, 2019.

3. Admits only that petitioner's 2017 Tax Return reported owing no tax for the 2017 tax year. Denies the remainder for lack of sufficient information or knowledge.

4. Admits.

5. Admits.

6. Admits only that petitioner received a Notice CP49 dated April 1, 2019 stating that respondent applied petitioner's claimed 2017 overpayment to his unpaid balances, and that a copy of the Notice CP49 issued to petitioner is attached to the petition as "Exhibit C". Denies for lack of sufficient information and knowledge whether petitioner received the Notice CP49 the day after he received Letter 3176C from respondent. Denies the remainder.

7. Denies for lack of sufficient information or knowledge.

8. Admits only that respondent mailed to petitioner Notice CP504 dated August 5, 2019 stating that petitioner owes \$5,000, plus interest, and that a genuine copy of Notice CP504 is attached to the petition as "Exhibit E". Denies the remainder.

9. Denies for lack of sufficient information or knowledge.

10. Denies petitioner's 2017 Tax Return was accurate. Denies respondent issued a Notice CP2000 dated October 3, 2019 to petitioner for the 2017 tax year. Alleges that respondent issued to petitioner a Letter 525 on October 3, 2019 enclosing a Form 4549 with proposed changes to petitioner's 2017 Tax Return.

11. Admits only that attached as "Exhibit F" to the petition is a letter written by petitioner and addressed to respondent's office in Ogden, Utah purportedly responding to a letter issued by respondent dated October 3, 2019 disagreeing with the changes proposed by respondent and signed by petitioner under penalties of perjury, and that attached as "Exhibit G" are the United States Postal Service tracking results for mail with tracking number 70191640000171745058 which was delivered at 12:25 pm on November 1, 2019 in Ogden, Utah 84201. Denies that respondent issued a Notice CP2000 to petitioner on October 3, 2019 for the 2017 tax year. Alleges that respondent issued a Letter 525 to petitioner on October 3, 2019 for the 2017 tax year, and that petitioner failed to respond thereto.

12. Admits only that respondent's Ogden, Utah Service Center issued to petitioner a Letter 3219 (SC/CG) dated November 27, 2019 ("Notice of Deficiency") and that a portion of the

Notice of Deficiency is attached to the petition as "Exhibit H". Denies that a complete copy of the Notice of Deficiency is attached to the petition. Denies the remainder for lack of sufficient information or knowledge.

13. Admits only that the deficiency and addition to tax under I.R.C. § 6651(a)(2) asserted by respondent against petitioner for the 2017 tax year are as alleged. Denies for lack of sufficient information and knowledge the specific amount of interest asserted by respondent as owed by petitioner for the 2017 tax year. Alleges that the accuracy-related penalty under I.R.C. § 6662(a) asserted by respondent for the 2017 tax year is \$6,192.60, not \$6,192 as alleged, and alleges that respondent asserted an addition to tax under I.R.C. § 6651(a)(1) in the amount of \$2,924.55.

14. Admits only that respondent processed petitioner's 2017 Tax Return on April 1, 2019, and applied the overpayment claimed by petitioner on his 2017 Tax Return to unpaid liabilities owed by petitioner. Denies that a frivolous penalty in the amount of \$5,000 is at issue in this case. Denies the remainder.

15. Admits only that petitioner disputes all adjustments asserted in the Notice of Deficiency. Denies the

civil penalty under I.R.C. § 6702 in the amount of \$5,000 can be disputed in this case. Denies the remainder.

16. Admits only that petitioner filed his 2017 Tax Return reporting no tax liability, that respondent issued a letter to petitioner dated March 29, 2019 advising him that his 2017 Tax Return claimed one or more frivolous positions, and that on April 1, 2019, respondent applied the overpayment claimed by petitioner on his 2017 Tax Return to petitioner's unpaid tax liabilities. Denies the remainder.

17. Denies that petitioner sought "meaningful clarification" from respondent. Denies the remainder for lack of sufficient information or knowledge.

18. Denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies.

19. Denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies.

20. Denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies.

21. Denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made

allegations of fact, denies, and alleges that the civil penalty for frivolous tax returns is not at issue in this case.

22. Denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies.

ASSIGNMENT OF ERRORS

23. a. Denies that the Notice of Deficiency is based on any errors, and further responds as follows:

a. To the extent petitioner failed to make allegations of fact that can be admitted or denied, denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies, admits only that respondent processed petitioner's 2017 Tax Return and applied petitioner's claimed overpayment to petitioner's unpaid tax liabilities from prior tax years, and denies the remainder.

b. Denies third party information returns were erroneously filed. Denies respondent erred. Denies the remainder, if any.

c. Denies that petitioner made an allegation of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies.

d. To the extent petitioner failed to make allegations of fact that can be admitted or denied, denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies that the third party information returns are erroneous and denies the remainder.

e. Denies that petitioner made allegations of fact that can be admitted or denied.

f. To the extent petitioner failed to make allegations of fact that can be admitted or denied, denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies and alleges that respondent's position is set forth in the Notice of Deficiency.

g. To the extent petitioner failed to make allegations of fact that can be admitted or denied, denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies that the civil penalty under I.R.C. § 6702 is at issue in this case and denies the remainder for lack of sufficient information and knowledge.

h. Denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies.

i. Denies.

j. Denies that respondent asserted a penalty under I.R.C. § 6663 in the Notice of Deficiency at issue in this case.

k. Denies.

l. Denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies.

2.

a. Admits only that respondent processed petitioner's 2017 Tax Return on April 1, 2019, which date was approximately seven months before the issuance of the Notice of Deficiency. Denies the remainder. Alleges that petitioner mailed his 2017 Tax Return to respondent on December 26, 2018 and that respondent applied petitioner's claimed overpayment for the 2017 tax year to unpaid liabilities owed by petitioner for other tax years.

b. Denies. Alleges that petitioner attached to his 2017 Tax Return, five Forms 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions

From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. ("Forms 4852"), challenging third party information forms issued to petitioner, and filed with respondent, for the 2017 tax year.

c. Denies. Alleges that petitioner attached to his 2017 Tax Return, five Forms 4852, and that such Forms 4852 were not signed by petitioner.

d. Admits.

f. To the extent petitioner failed to make allegations of fact that can be admitted or denied, denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies for lack of sufficient information or knowledge.

g. To the extent petitioner failed to make allegations of fact that can be admitted or denied, denies that petitioner made allegations of fact that can be admitted or denied. To the extent petitioner made allegations of fact, denies for that the penalty under I.R.C. § 6702 is at issue in this case, denies respondent's imposition of a penalty under I.R.C. § 6702 was "baseless", and denies the remainder for lack of information.

AFFIRMATIVE DEFENSES

1. through 5. Denies that petitioner made allegations

of fact that can be admitted or denied.

6. Denies that petitioner made allegations of fact that can be admitted or denied, and further answers as follows:

a. Denies that petitioner made allegations of fact that can be admitted or denied.

b. Denies that petitioner made allegations of fact that can be admitted or denied.

c. Admits only that respondent processed petitioner's 2017 Tax Return and that respondent issued a "30-day letter" to petitioner on October 3, 2019 advising petitioner to respond within 30 days of the letter date. Denies that petitioner responded to the "30-day letter" issued by respondent on October 3, 2019. Denies that respondent issued any refund to petitioner for the 2017 tax year. Denies that respondent's Internal Revenue Manual has a section 4.14.1.3. Alleges that respondent applied the overpayment claimed by petitioner to petitioner's unpaid liabilities for prior tax years. Denies that respondent's application of the overpayment claimed by petitioner to his unpaid liabilities was done "in accordance with the information provided by and sworn to under penalty of perjury by the Petitioner". Denies that the remainder constitutes allegations of fact that can be admitted or denied.

denies that petitioner made allegations of fact that can be admitted or denied.

7. Denies generally each and every allegation of the petition not herein specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the relief sought in the petition be denied and that respondent's determination, as set forth in the notice of deficiency be in all respects approved.

MICHAEL J. DESMOND
Chief Counsel
Internal Revenue Service

Date: 05/01/2020

By: /s/ Marissa J. Savit

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Docket No. 4048-20

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ANSWER was served on petitioner by mailing the same on 05/01/2020 in a postage paid wrapper addressed as follows:

Craig J. Schieder
705 Moore Ave.
Buffalo, NY 14223

Date: 05/01/2020

/s/ Marissa J. Savit
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