

18-1100

No. _____

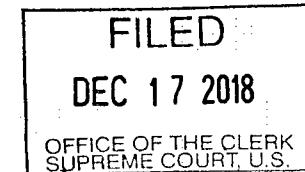
In The

Supreme Court of the United States

Wayne D. Ramsay, Petitioner,

v.

Commissioner of Internal Revenue, Respondent.



**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

Wayne D. Ramsay, J.D.
P.O. Box 9100-277
276 State Highway 16
Bandera, Texas 78003
wayneramsay@mail.com
(210) 362-0254
Petitioner

QUESTION PRESENTED FOR REVIEW:

DOES THE U.S. TAX COURT HAVE JURISDICTION TO DETERMINE DEFICIENCY INTEREST ASSESSED BY THE INTERNAL REVENUE SERVICE?

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iii
OPINIONS AND ORDERS BELOW	1
JURISDICTIONAL STATEMENT	1
RULES INVOLVED.....	1
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE WRIT.....	3
APPENDIX A-Court of Appeals Opinion dated July 23, 2018	1a
APPENDIX B-Tax Court Decision	3a
APPENDIX C- Tax Court Memorandum Findings of Fact and Opinion.....	4a
APPENDIX D-Court of Appeals Denial of Petition for Rehearing dated September 18, 2018.....	13a
APPENDIX E-Statutory Material.....	14a

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Clark v. Campbell</i> , 501 F.2d 108 (5th Cir. 1974)	3
<i>Commissioner v. McCoy</i> , 484 U.S. 3 (1987).....	3, 4, 5
<i>Estate of Baumgardner v. C.I.R.</i> , 85 T.C. 445 (1985).....	4, 5
<i>Sunoco v. C.I.R.</i> , 663 F.3d 181 (3d Cir. 2011)	4
 Statutes and Rules	
26 U.S.C. §6214(a).....	1, 4, 5
26 U.S.C. §6601(a).....	3
26 U.S.C. §6621(d).....	1, 2, 5, 6
26 U.S.C. §6651(a)(3)	3
26 U.S.C. §7442.....	1
28 U.S.C. §2101.....	1
F.R.A.P. Rule 13.....	1

OPINIONS AND ORDERS BELOW

The Court of Appeal's opinion (Pet. App. 1a) is reported at 732 F. App'x 307 (5th Cir. 2018). The Tax Court's Memorandum Findings of Fact and Opinion (Pet. App. 3a) is reported at 114 T.C.M. (CCH) 559 (T.C. 2017) and 2017 WL 5503163. The Tax Court Decision appears at Pet. App. p. 13a.

JURISDICTIONAL STATEMENT

Jurisdiction of the Tax Court in this case is conferred by 26 U.S.C. §7442. Rule 13 of the Federal Rules of Appellate Procedure confers jurisdiction on the Court of Appeals to review Tax Court decisions. 28 U.S.C. §2101 grants the Supreme Court jurisdiction to review decisions of the Court of Appeals. The Fifth Circuit rendered its opinion on July 23, 2018 and denied Petitioner's motion for rehearing on September 18, 2018. This petition for certiorari, as originally submitted, was postmarked December 17, 2018 and received by the Clerk of this Court on December 20, 2018. A letter from the Clerk of this Court dated December 20, 2018 gave Petitioner 60 days from the date of the letter, or until February 18, 2019, to correct and re-submit this petition for certiorari.

RULES INVOLVED

26 U.S.C. §6214(a) granting the U.S. Tax Court jurisdiction over "any additional amount, or any addition to the tax" and 26 U.S.C. §6621(d), eliminating interest when there are "equivalent

underpayments and overpayments by the same taxpayer".

STATEMENT OF THE CASE

Taxpayer received incorrect information from an investment fund regarding his 2011 tax year income, resulting in underreporting of his income for the 2011 tax year. The Tax Court found Taxpayer had a deficiency in computation of federal income tax for the 2011 tax year in the amount of \$3,203 but also a timely overpayment for the same tax year in the amount of \$7,414 for which Taxpayer declined refund and applied to the following tax year (2012). The Tax Court opinion says:

If, as petitioner [Taxpayer] asserts, his account was constantly in an overpaid condition, little or no interest may have been assessed. We cannot determine, however, what has been or will be done in this regard [because] Respondent [Commissioner of Internal Revenue] argues and the Court agrees that there is no applicable exception here to the general rule that the [Tax] Court lacks jurisdiction to determine interest in a deficiency case. [Pet. App. p. 10a]

The Fifth Circuit affirmed.

REASONS FOR GRANTING THE WRIT

The U.S. Supreme Court in *Commissioner v. McCoy*, 484 U.S. 3 at 7 (1987) said:

Interest on a tax deficiency is separately mandated by 26 U.S.C. §6601(a). A penalty that accrues under §6651(a)(3) is also separate and outside the scope of the petition to the Tax Court. ... The Tax Court is a court of limited jurisdiction and lacks general equitable powers. [citation omitted] The [taxpayer] was not without an opportunity to litigate the validity of the interest and the late-payment penalty. The proper procedure was for [the taxpayer] to pay the interest and penalty and sue for their refund in an appropriate federal district court or in the Claims Court.

The Internal Revenue Service assessed deficiency interest against the Taxpayer in this case despite his timely overpayment for the tax year in question. Interest is part of almost every dispute resolved in U.S. Tax Court. The "clear Congressional intention to provide all taxpayers with a forum in which to contest income tax liability prior to payment is a compelling factor" in interpreting the Internal Revenue Code. *Clark v. Campbell*, 501 F.2d 108 at 122 (5th Cir. 1974). Excluding interest assessed by the Internal Revenue Service on a taxpayer from the jurisdiction of the U.S. Tax Court defeats the

Congressional purpose of giving taxpayers a pre-payment forum in which to resolve tax disputes with the Internal Revenue Service, because (as stated above in *McCoy*) prior payment is a prerequisite for relief in any forum other than the Tax Court. As also stated above in *McCoy*, excluding interest from the jurisdiction of the Tax Court necessitates resolving a tax dispute in two different forums (U.S. Tax Court and a U.S. district court or the Court of Claims). This makes no sense in terms of judicial economy, as the Tax Court argued in *Estate of Baumgardner v. C.I.R.*, 85 T.C. 445 (1985), in which the Tax Court determined it *did* have jurisdiction over interest. In *Sunoco v. C.I.R.*, 663 F.3d 181 at 190 (3d Cir. 2011), the Third Circuit said “The Tax Court’s jurisdiction in such cases is based on the delinquency owed by the taxpayer, but may then extend to any claim that the taxpayer was charged too much interest on the delinquency.”

There is no *statute* saying the U.S. Tax Court has no jurisdiction over interest. There *is* a statute, 26 U.S.C. §6214(a), providing that —

[T]he Tax Court shall have jurisdiction ... to determine whether any additional amount, or any addition to the tax should be assessed, if claim therefore is asserted by the Secretary at or before the hearing or a rehearing. [Pet. App. 14a]

Applying the ordinary meaning of those words, interest is an additional amount or addition to the

tax. Chapter 68 of the Internal Revenue Code is titled "Additions to the Tax, Additional Amounts, and Assessable Penalties". Chapter 68 says nothing about interest. However, §6214(a) (quoted above, giving the Tax Court jurisdiction over "additional amounts" and "additions to tax") makes no reference to Chapter 68. Furthermore, the Supreme Court made no reference to 26 U.S.C. §6214 in *McCoy*. This petition for certiorari is an opportunity for the Court to reverse *McCoy* and the lower court decisions based on *McCoy* and fulfill the Congressional purpose of giving taxpayers a pre-payment forum in which to resolve disputes with the Internal Revenue Service.

The current practice of the Internal Revenue Service is to send notices of deficiency by certified mail to taxpayers demanding not only payment for deficiency in computation of federal income, estate, or gift tax, or underpayment of same, but also interest on the deficiency or underpayment (e.g., ROA.11) even when as in the instant case there was an overpayment for the same tax year in an amount that is more than double the amount of the deficiency. This is contrary to the rule stated in *Estate of Baumgardner*, 85 T.C. 445 at 452 (1985) that "Interest does not accrue upon a deficiency, but only upon the existence of an underpayment" as well as 26 U.S.C. §6621(d):

(d) Elimination of interest on overlapping periods of tax overpayments and underpayments.

To the extent that, for any period,

interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer of tax imposed by this title, the net rate of interest under this section on such amounts shall be zero for such period.

These notices of deficiency, sent to thousands if not millions of taxpayers each year (e.g., ROA.7-11), tell taxpayers they have 90 days to either pay what the Government demands or petition the U.S. Tax Court, with no mention of the other options. Then, after the Internal Revenue Service has lured the taxpayer into Tax Court, the taxpayer is told, for the first time, that the Tax Court has no jurisdiction over interest. This deceptive practice, repeated thousands of times, is an issue worthy of the attention of the Supreme Court.

Dated: February 14, 2019

Respectfully submitted,

Wayne D. Ramsay, J.D.
P.O. Box 9100-277
276 State Highway 16
Bandera, Texas 78003
wayneramsay@mail.com
(210) 362-0254