

No.

IN THE

**Supreme Court of the United States**

Brad Stephen Francis and  
Christine Carol Francis,  
Petitioners,

v.

Commissioner of Internal Revenue,  
Respondent.

On Petition For Writ of Certiorari  
To The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Brad S. Francis, *pro se*  
9704 North Holmes Street  
Kansas City, MO 64155-2098  
(816) 812-3600

## THE QUESTIONS PRESENTED FOR REVIEW

The Eighth Circuit has departed from the accepted and usual course of judicial proceedings under Federal Rule of Appellate Procedure 47(a) and, in so doing, has sanctioned the United States Tax Court's departure from authority governing its jurisdiction provided at 26 U.S.C. § 6211 et seq and 5 U.S.C. § 706(2)(F).

Does the Eighth Circuit's judgement and *PER CURIAM AFFIRMANCE* using *Local Rule 47B AFFIRMANCE OR ENFORCEMENT WITHOUT OPINION* of Case No. 18-2447 satisfy the demands of justice and due process considering the outstanding issues raised in the appellate brief that were not addressed in a written reasoned opinion?

Did the United States Tax Court have subject matter jurisdiction in Case No. 9801-16 necessary to dismiss the case for lack of prosecution?

Did the United States Tax Court have personal jurisdiction in Case No. 9801-16 necessary to dismiss the case for lack of prosecution?

Does 5 U.S.C. § 706(2)(F) provide the United States Tax Court with jurisdiction to look behind a statutory notice of deficiency to allegations of agency misconduct?

## **PARTIES TO THE PROCEEDING**

Brad Stephen Francis  
Christine Carol Francis  
Appellants / Petitioners / Plaintiffs – *pro se*  
9704 North Holmes Street  
Kansas City, Missouri 64155-2098  
Phone: (816) 812-3600

Commissioner of Internal Revenue  
Appellee / Respondent

Mr. William M. Paul  
Department of Treasury  
Internal Revenue Service  
Office of Chief Counsel  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224-0000

Mr. Gilbert Steven Rothenberg  
Ms. Ellen Page DelSole  
(202) 514-8128  
Ms. Rachel Ida Wollitzer  
(202) 514-6707  
Department of Justice  
Tax Division, Appellate Section  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

## **DIRECTLY RELATED PROCEEDINGS**

Eighth Circuit Case No. 18-2447 (unpublished)  
Brad S. Francis and Christine C. Francis, appellants  
v. Commissioner of Internal Revenue, appellee

United States Tax Court Case No. 009801-16  
Brad S. Francis & Christine C. Francis, petitioners v.  
Commissioner of Internal Revenue, respondent  
Redetermination of Deficiency

Case No. 17-3679 filed in the Eighth Circuit,  
submitted January 29, 2018, (unpublished);  
Seeking the Eighth Circuit to determine the Tax  
Court's proper jurisdiction in an interlocutory review  
by right – not permission.

Petition for Writ of Certiorari No. 18-51  
Denied October 1, 2018  
Brad Francis, et ux., petitioners v.  
Commissioner of Internal Revenue, respondent  
RE: Case No. 17-3679

## TABLE OF CONTENTS

Questions before the Court.....	ii
Parties Below.....	iii
Proceedings Directly Related .....	iv
Table of Contents .....	v
Table of Authorities.....	ix
Opinions Below.....	1
Jurisdiction.....	1
Provisions of Authority Involved .....	1
Statement of the Case .....	7
Cause of Action: Notice of Deficiency .....	7
Action in the Tax Court .....	12
First Appeal to the 8 <sup>th</sup> Circuit .....	12
(Interlocutory Review – Jurisdiction)	
Tax Court’s Final Determination .....	21
Petition for Writ of Certiorari No. 18-51 .....	22
(RE: Interlocutory Review)	

Second Appeal to the 8 <sup>th</sup> Circuit .....	22
Reasons for Granting the Petition.....	28
<b>REASON ONE:</b> .....	28
<p>The Eighth Circuit’s PCA misapprehends the nature of the authority at 26 U.S.C. § 6211 and failed to apprehend that the Tax Court exceeded authority at 26 U.S.C. § 6211 (definition of deficiency) for purposes of obtaining subject matter jurisdiction. The Statutory Notice of Deficiency (“SNOD”) did not assert a deficiency within the meaning of 26 U.S.C. § 6211.</p>	
<b>REASON TWO:</b> .....	31
<p>The Eighth Circuit’s PCA failed to address the issue raised related to the Tax Court’s duties under the Administrative Procedure Act. The Tax Court failed to exercise their jurisdiction at 5 U.S.C. § 706(2)(F) to look behind the notice of deficiency at allegations of agency wrongdoing that unfairly shifted the burden of proof in deficiency proceedings.</p>	
<b>REASON THREE:</b> .....	34
<p>The Eighth Circuit’s PCA failed to address or otherwise resolve the issue of personal jurisdiction related to the Tax Court’s usurpation of a two-sentence request for information as an imperfect petition that forced the Francis’ Family to defend their position after the Tax Court stipulated only that they “<u>MAY</u>” release jurisdiction . . .</p>	

<b>REASON FOUR:</b> .....	35
The 8 <sup>th</sup> Circuit deprived the Francis' Family of due process of law by failing to provide a reasoned opinion resolving substantive issues raised in the briefs by electing to dismiss the action in a PER CURIAM AFFIRMANCE under local rule 47 that did not justify the affirmance without opinion when departing from the plain meaning of 26 U.S.C. § 6211 and also when allowing the Tax Court to avoid their duties under 5 U.S.C. § 706(2)(F).	
Conclusion.....	36
Declarations under 28 U.S.C. § 1746 .....	37
Appendix A:	
8 <sup>th</sup> Circuit Mandate .....	1a
July 15, 2019	
Appendix B:	
8 <sup>th</sup> Circuit ORDER denying rehearing en banc .....	2a
July 08, 2019	
Appendix C:	
8 <sup>th</sup> Circuit PER CURIAM AFFIRMANCE.....	3a
May 09, 2019	
Appendix D:	
8 <sup>th</sup> Circuit JUDGMENT .....	5a
May 09, 2019	
Appendix E:	
Walters v. United States .....	6a
Cited in 8 <sup>th</sup> Circuit's PCA	

Appendix F:	
Long v. C.I.R. ....	16a
Cited in 8 <sup>th</sup> Circuit's PCA	

Appendix G:	
Tax Court's Order of Dismissal & Decision .....	20a
Docket No. 9801-16 / dated April 13, 2018	

Appendix H:	
Francis' Family's Notice of Non-Participation . . .	22a
in Order to Protect Personal Jurisdiction.	

Appendix I:	
8 <sup>th</sup> Circuit's Judgment .....	26a
Case No. 17-3679 / Interlocutory Review	
Note: This order denied the DOJ motion could be	
filed out of time and then granted the same motion.	
January 29, 2018	

Appendix J:	
8 <sup>th</sup> Circuit Order on Panel Rehearing .....	27a
February 13, 2018	

Appendix K:	
8 <sup>th</sup> Circuit Order Denying Rehearing .....	28a
April 02, 2018	

Appendix L:	
26 U.S.C. § 6211 et seq .....	29a
Deficiency Procedures	



## TABLE OF AUTHORITIES

### Constitution

Article III, §§ 1 & 2.....	1
Amendment V .....	2

### Cases

Arbaugh v. Y.H. Corp., 546 U.S. 500, 514 (2006).....	18
---	----

Broadway v. Commissioner, 111 F. 3d 593, 595 (8 <sup>th</sup> Cir.1997).....	17
---	----

Capron v. Van Noorden, 2 Cranch 126, 127 (1804).....	20
---	----

Francis v. C.I.R. 1:18-cv-00823-RBW.....	8
---	---

Francis v. C.I.R. 1:19-cv-009490RBW .....	8
--	---

Francis v. United States - Supreme Court Docket 17-1596.....	iv, 11
---	--------

Francis v. Commissioner - Tax Court Docket 9801-16.....	iv, 12, 14, 21, 25
--	--------------------

Francis v. C.I.R. - Eighth Circuit Case No. 17-3679.....	iv, 12, 16, 19, 22
Francis v. C.I.R. ....	22
Petition for Writ of Certiorari No. 18-51	
Frieling v. Commissioner, 81 T.C. 42, 46 (1983).....	3
Kontrick v. Ryan, 540 U.S. 443, 455 (2004).....	19
Long v. C.I.R., 742 F.2d 1141, 1143 (8 <sup>th</sup> Cir. 1984)	26
Mansfield, C. & L. M. R. Co. v. Swan, 111 U.S. 379, 382 (1884).....	19
Midland Mortgage Co., v. Commissioner, 73 T.C. 902 (1980).....	30
Normac, Inc., & Normac International v. Commissioner, 90 T.C. 142, 146-147 (1988).....	18
O'Dwyer v. Commissioner, 266 F.2d 575 (4 <sup>th</sup> Cir. 1959) .....	25
Prairie v. Commissioner, 469 F.2d 1085, 1086 (8 <sup>th</sup> Cir. 1972) .....	25
QinetiQ U.S. Holdings, Inc. v. Commissioner, 845 F.3d 555, 561 (4 <sup>th</sup> Cir. 2017) .....	25

Robinette v. Commissioner of Internal Revenue, 439 F.3d 455 (8 <sup>th</sup> Cir. 2006) .....	26
Sukhov v. Gonzales, 403 F. 3d 568, 570 (8 <sup>th</sup> Cir. 2005) .....	20
Stamm International Corp., v. Commissioner, 84 T.C. 248, 252 (1985).....	15
Walters v. United States, 474 F.3d 1137, 1139 (8 <sup>th</sup> Cir. 2007).....	26
Wheeler's Peachtree Pharmacy, Inc., v. Commissioner, 35 T.C. 177, 180 (1980).....	18
Williams v. Commissioner, 999 F.2d 760, 763 (4 <sup>th</sup> Cir. 1993).....	18
<b>FOIA Cases</b>	
F16033-0142.....	9, 10,11
F16068-0179.....	9

## **Statutes**

5 U.S.C. § 702 .....	11
5 U.S.C. § 706(2)(F).....	3, 12, 23,26, 27, 28, 31, 32, 33
26 U.S.C. § 6211.....	4,7,22,24, 27, 28, 29, 30, 31
26 U.S.C. § 6212 .....	4,7,22,27
26 U.S.C. § 6213.....	4,7, 12,22, 23, 27, 30
26 U.S.C. § 6214.....	4,7, 27
26 U.S.C. § 6702.....	7,8
26 U.S.C. § 6703 .....	8
26 U.S.C. § 7433 .....	11, 27
26 U.S.C. § 7482.....	12, 14, 16
26 U.S.C. § 7491 .....	24
28 U.S.C. § 1291.....	13, 14
28 U.S.C. § 1746.....	23, 2
28 U.S.C. § 2072 .....	4,5
44 U.S.C. § 1507.....	7

## **Rules**

Federal Rule of Civil Procedure 1 .....	19
Federal Rule of Civil Procedure 12(h)(1) .....	19
Federal Rule of Appellate Procedure 40(a)(2) .....	20
Federal Rule of Appellate Procedure 47 .....	5
Eighth Circuit Rule 47A(b).....	6,26
Supreme Court Rule 14.1(g)(ii).....	8, 12,16

**Regulations**  
26 C.F.R. § 301.6203-1.....8  
26 C.F.R. § 301.7433-1(e) .....8

**Other Sources**  
Section 7433's Statute of Limitations: How  
Courts Have Wrongly Turned a Taxpayer's  
Exclusive Sword into the IRS's Shield  
Against Damages, 61 Clev. St. L. Rev.  
195 (2013); Diana Leyden.....11  
  
House Report No 79-1980 (1946).....32  
Part 4, Sectin 10(E);

## JURISDICTION

This case arises under the Constitution of the United States. The jurisdiction of Article III is invoked.

The judgment by the Eighth Circuit was filed on May 09, 2019. A petition for *rehearing en banc* was denied on July 08, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## PROVISIONS OF AUTHORITY INVOLVED

United States Constitution, Article III,

### Section 1

**“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.”**

### Section 2

**“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and the Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and**

Consuls; - too all Cases of admiralty and maritime Jurisdiction; to **Controversies to which the United States shall be a Party**; - to Controversies between two or more States; - between Citizens of different States; - between Citizens of the same State claiming Lands under Grants of different States, In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction.

In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.” [emphasis added]

#### Amendment V

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service

in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” [emphasis added]

5 U.S.C. § 706(2)(F) in context

“To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege, or immunity;
- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (D) without observance of procedure required by law;



(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or  
(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.”

#### SEE APPENDIX L

26 U.S.C. § 6211	.....	pp. 29a – 30a
26 U.S.C. § 6212	.....	pp. 30a – 31a
26 U.S.C. § 6213	.....	pp. 31a – 38a
26 U.S.C. § 6214	.....	pp. 38a – 39a

#### 28 U.S.C. § 2072

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.  
(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such

rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

Federal Rule of Appellate Procedure 47(a)(1)  
Local Rules by Courts of Appeals

(a) Local Rules

- (1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with – but not duplicative of – Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

## Eighth Circuit Local Rule 47B

A judgment or order appealed may be affirmed or enforced without opinion if the court determines an opinion would have no precedential value and any of the following circumstances disposes of the matter submitted to the court for decision:

- (1) A judgment of the district court is based on findings of fact that are not clearly erroneous;
- (2) The evidence in support of a jury verdict is not insufficient;
- (3) The order of an administrative agency is supported by substantial evidence on the record as a whole; or
- (4) No error of law appears.

The court in its discretion, with or without further explanation, may enter either of the following orders: "AFFIRMED. *See* 8<sup>th</sup> Cir. R. 47B"; or "ENFORCED. *See* 8<sup>th</sup> Cir. R. 47B."

## STATEMENT OF THE CASE

### Administrative Agency Level

Cause of Action: 26 U.S.C. § 6211 et seq.

Deficiency Procedures in the Case of Income, Estate, Gift,  
and Certain Excise Taxes;

---

1. The Francis' Family filed a timely non-frivolous return on Form 1040 for tax period ending December 31, 2013, on March 18, 2014.
2. On May 18, 2015, the Francis' Family submitted a *true duplicate*<sup>1</sup> tax return on form 1040 issuing notice to the IRS<sup>2</sup>, *inter alia*, that we had not heard from them regarding our 2013 return.
3. After 533 days of silence, on September 2, 2015, the IRS issued form LTR 3176C declaring the Francis' Family's 2013 return frivolous.
4. The IRS determination issued on form LTR 3176C cited 26 U.S.C. § 6702 but did not specify the formal or informal rule basis for the determination nor did it provide a reasoned opinion.
5. The IRS determination, paragraph 4, utilized an unpublished<sup>3</sup> informal rule in the guise of a

---

<sup>1</sup> We copied our copy of original return & placed it in the mail.

<sup>2</sup> Internal Revenue Service, IRS hereafter.

<sup>3</sup> 44 U.S.C. § 1507 Filing document as constructive notice; publication in Federal Register as presumption of validity; judicial notice; citation.

formal rule required of 26 U.S.C. § 6702(c) to circumvent their duty at 26 U.S.C. § 6703, but did not so specify<sup>4</sup> in LTR 3176C.

6. On September 3, 2015, the Francis' Family issued the IRS a letter that raised *issues of law* and *issues of fact* with form LTR 3176C; the IRS did not reply.

7. The IRS followed the determination, paragraph 4, with an assessment of frivolous penalties under Notice CP15 dated November 16, 2015.

8. The Francis' Family requested the IRS issue them a copy of the signed assessment pursuant to 26 C.F.R. § 301.6203-1, under FOIA<sup>5</sup> Case #F16033-0142.

9. On February 8, 2016, the IRS issued the Francis' Family an unsigned *Certificate of Assessment* on Form 4340 in response to FOIA Case #F16033-0142.

10. On January 11, 2016, the IRS issued two CP504 Notices of Intent to Levy<sup>6</sup> with 3 possible locations<sup>7</sup> for the Francis' Family to send a reply.

---

<sup>4</sup> The Francis' Family discovered this through FOIA request for the Administrative Record – some requiring suit be brought – See Case Nos. 1:18-cv-00823-RBW & 1:19-cv-00949-RBW.

<sup>5</sup> Freedom of Information Act, hereinafter FOIA

<sup>6</sup> The Francis' Family had previously issued *Exhaustion of Administrative Remedies* pursuant to 26 C.F.R. § 301.7433-1(e) on June 1, 2015, regarding tax periods 2011, 2012, and 2014; and the statute of limitations under 26 U.S.C. § 7433 was June 23, 2016.

<sup>7</sup> Atlanta, GA; Memphis, TN; and Cincinnati, OH

- 
11. The Francis' Family made a timely CDP<sup>8</sup> Hearing Request for tax period 2013 but the IRS reversed<sup>9</sup> the timely request and refused the hearing.
12. The IRS issued Letter 525 (Notice of Examination) dated February 5, 2016, for tax period 2013 and requested the Francis' Family's response by March 6, 2016.
13. The Francis' Family issued a response dated February 26, 2016, to the IRS audit of tax period 2013.
14. The IRS received<sup>10</sup> the Francis' Family's response (paragraph 13) on February 25, 2016.
15. The Francis' Family's response to the IRS audit, *supra*, was witnessed and mailed by Jo Shernaman of Reneau & Shernaman, Attorneys-At-Law.
16. The IRS, without waiting until the March 6, 2016, deadline expired<sup>11</sup>, did hide the results of the audit in FOIA Case# F16033-0142<sup>12</sup> being mailed in an envelope postmarked March 02, 2016.
17. The IRS's audit results did not address the *issues of law* and *issues of fact* raised by the Francis'

---

<sup>8</sup> Collection Due Process Hearing

<sup>9</sup> FOIA Case# F16068-0179.

<sup>10</sup> The audit response was dated February 26, 2016, but mailed on February 23, 2016 under Certified Mail Article #7015 1520 0001 4493 7115.

<sup>11</sup> See paragraph 11 – March 6, 2016, was the deadline for response set by the IRS for the examination of the Francis' Family's 2013 return.

<sup>12</sup> See paragraph 9; the same mailing delivered unsigned assessments on form 4340.

Family in their response (see paragraph 12) to the examination.

18. The IRS' audit results include an Examination Closing Input Document that shows a disposal code of 10 which indicates a '*defaulted statutory notice*' –

19. A '*defaulted statutory notice*' indicates that the IRS record shows the Francis' Family did not reply<sup>13</sup> to IRS audit Letter 525 dated February 5, 2016; *see* paragraph 12.

20. The Examination Closing Input Document (paragraph 18) was not dated or signed.

21. The audit results were hidden among RACS<sup>14</sup> Reports, Forms 4340, and Account Transcripts sent in response to a FOIA<sup>15</sup> request.

22. The RACS Reports were old and predated<sup>16</sup> September 2, 2015: the date of the first IRS communication sent to the Francis' Family regarding tax period 2013.

---

<sup>13</sup> This allowed the IRS to avoid giving the Francis' Family Notice by listing the points of disagreement between the parties and the law the IRS counted upon – this is especially important considering the disagreement surrounding IRC § 6702(c) where an unpublished informal rule was used in the guise of a formal rule for the determination.

<sup>14</sup> The acronym stands for Revenue Accounting Control System: RACS.

<sup>15</sup> FOIA Case# F16033-0142 mailed from zip code 90012 (Los Angeles, CA).

<sup>16</sup> Dates include August 16, 2012; August 27, 2012; April 25, 2013; May 6, 2013; and June 20, 2014 – reference ¶ 3.

23. The IRS did not send the Francis' Family a 30 day letter containing instructions on how to appeal<sup>17</sup> the IRS proposed deficiency following the audit.

24. Twenty-eight days after<sup>18</sup> sending the audit results in a FOIA disclosure the IRS issued<sup>19</sup> the 90 day letter (Letter 3219 – *Notice of Deficiency*) on March 30, 2016, with an expiration of June 28, 2016.

25. June 28, 2016, is 5 days after the statute of limitations for bringing suit under 26 U.S.C. § 7433 expired<sup>20</sup> on June 23, 2016.

---

<sup>17</sup> The Francis' Family requested an *Appeals Office Conference* on April 18, 2016. We received a response from the IRS to our request on May 26, 2016. The response said they are reviewing our information and would contact us again if they could not issue a response by June 13, 2016; we did not receive a follow up response.

<sup>18</sup> FOIA Case #F16033-0142; The results of the examination were placed in an envelope postmarked March 2, 2016.

<sup>19</sup> The envelopes containing the two Notices of Deficiency for tax period 2013 (one addressed to Brad S. Francis and the other to Christine C. Francis) have postmarks of March 31, 2016, which only provided the Francis' Family with 89 days before the June 28, 2016, deadline.

<sup>20</sup> The statute of limitations is often miscalculated for 26 U.S.C. § 7433: See Diana Leyden, *Section 7433's Statute of Limitations: How Courts have Wrongly Turned a Taxpayer's Exclusive Sword into the IRS's Shield against Damages*, 61 Clev. St. L. Rev. 195 (2013). The statute of limitations for the Francis' Family to bring action under 26 U.S.C. § 7433 for tax periods 2011 and 2012 was June 23, 2016. The Francis' Family brought action under 26 U.S.C. § 7433, and 5 U.S.C. § 702, which is currently docketed in the United States Supreme Court under Case No. 17-1596.



26. The determination on the face of the *Notice of Deficiency* changed the amount of gross income verified by the Francis' Family on line 7 of form 1040 for tax period 2013.

27. The statutory definition of a deficiency codified at 26 U.S.C. § 6211 does not include statutory authorization to change a verified taxpayer's gross income on Form 1040.

28. Section 6211 of the IRC<sup>21</sup> provides that a deficiency is the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 exceeds the sum of the amount shown on the return plus amounts previously assessed (or collected without assessment as a deficiency) minus the amount of rebates (defined in subsection (b)(2) which have been made.

29. A deficiency is, therefore, the difference between the amount shown as tax due, and what that amount should be if deductions, adjustments, credits, and exemptions were properly applied resulting in an adjusted gross income.

**-UNITED STATES TAX COURT-**  
**Case No. 009801-16**

**Basis of Jurisdiction – Rule 14.1(g)(ii)**  
**26 U.S.C. § 6213(a) and 5 U.S.C. § 706(2)(F)**

---

<sup>21</sup> Internal Revenue Code, Title 26 of the United States Code.

30. The IRS' ninety-day Letter 3219 to the Francis' Family stated:

"The Tax Court has a simplified procedure for small tax cases when the amount in dispute is \$50,000 or less for any one tax year. You can also get information about this procedure, as well as a petition form you can use, by writing to the Clerk of the United States Tax Court at 400 Second Street NW, Washington, D.C. 20217. You should write promptly if you intend to file a petition with the Tax Court."

(emphasis added)

31. Therefore, the Francis' Family sent the Clerk of the Tax Court a two-sentence request for information on April 18, 2016, asking for information on the simplified procedure.

32. The Francis' Family included the first two pages of Letter 3219 with the paragraph bracketed in Letter 3219 that discussed writing promptly for information.<sup>22</sup>

33. The letter was signed "Brad" (omitting the surname "Francis" and omitting the full name of Christine Francis) and it did not contain the entire notice of deficiency; only the cover letter.

34. Chief Judge Michael B. Thornton filed the two-sentence request for information as a petition on April 26, 2018.

35. The Francis' Family issued protests declaring that they had not filed a petition and asking to be removed from the docket in letters<sup>23</sup> dated May 2 and May 3, 2016.

36. At that time the Francis' Family had not submitted a filing fee to the United States Tax Court.

37. In an ORDER dated May 10, 2016, Chief Judge Michael B. Thornton stated,

“\*\*\* Among other things, in those Letters petitioners indicate that they have not decided whether to continue to prosecute their Tax Court case. Upon due consideration and for cause, it is ORDERED that the time within which petitioners shall file an amended petition and pay the filing fee, is extended to June 28, 2016. If, by June 28, 2016, no amended petition and/or filing fee is received, the Court **may** dismiss this case for lack of jurisdiction.” (**Emphasis added**).

38. Chief Judge Michael Thornton turned over the position of Chief Judge to L. Paige Marvel on June 1, 2016; Chief Judge Marvel took over the Francis' Family's case at that time.

---

<sup>23</sup> Tax Court Docket Documents 003 and 004.

39. There are 83 docket entries (including 13 motions<sup>24</sup> by the Francis' Family) for Case No. 9801-16. About 28 entries are related to challenges to the Tax Court's subject matter jurisdiction and personal jurisdiction or ask the Court to determine if it has subject matter jurisdiction and personal jurisdiction:

Docket No.	Date	Filings & Proceedings
0001	04/26/16	Two-Sentence Request for Information filed as Petition
0009	07/06/16	"Second" Amended <sup>25</sup> Petition filed
0014	09/20/16	Motion to Investigate Respondent's Exhibits A & B
0017	09/26/16	Motion to Remand
0022	10/04/16	Motion to Determine Jurisdiction
0031	10/06/16	Motion for Interlocutory Appeal
0042	12/27/16	Motion to Dismiss for Lack of Jurisdiction
0055	09/06/17	Motion to Dismiss on Grounds of Mootness.
0067	12/04/17	Notice of Appeal to the 8 <sup>th</sup> Cir.

40. The *Motion to Dismiss for Lack of Subject Matter Jurisdiction*<sup>26</sup> specifically raises the issues that the Notice of Deficiency is invalid.

<sup>24</sup> Docket Documents 14, 17, 19, 20, 22, 23, 24, 30, 31, 36, 42, 47, 51

<sup>25</sup> To the extent the Commissioner issues an invalid notice, the taxpayer may file suit in the Tax Court and then seek to dismiss the suit on the grounds the court lacks jurisdiction; see *Stamm International Corp., v. Commissioner*, 84 T.C. 248, 252 (1985).

- 
41. Chief Judge Marvel denied the *Motion to Dismiss for Lack of Subject Matter Jurisdiction* without explanation.
42. On September 6, 2017, the Francis' Family issued a *Motion to Dismiss on Grounds of Mootness* based on the Court not having personal jurisdiction over the Francis' Family.
43. The Tax Court denied the *Motion to Dismiss on Grounds of Mootness* on November 8, 2017.
44. The Francis' Family appealed<sup>27</sup> to the Eighth Circuit to address subject matter jurisdiction and personal jurisdiction on December 1, 2017.
45. The Francis' Family gave the IRS and the Tax Court notice on December 11, 2017, of their intention to not participate in discovery or further Tax Court proceedings; Tax Court Docket No. 0070 'Notice to the Court of Petitioners' intention to protect personal jurisdiction by non-participation in discovery and subsequent phases of action.'

-United States Court of Appeals-  
-for the Eighth Circuit-  
Case No. 17-3679

Basis of Jurisdiction – Rule 14.1(g)(ii):  
26 U.S.C. § 7482(a)

---

<sup>26</sup> Tax Court Docket Document 0042.

<sup>27</sup> Received by the Tax Court on December 4, 2017, and entered on the Tax Court Docket as Document 0067.

### FIRST APPEAL

The Francis' Family appealed to the Eighth Circuit on December 1, 2017<sup>28</sup>, challenging the United States Tax Court's jurisdiction. The appeal was filed by the United States Tax Court on December 4, 2017.

On January 11, 2018, the Department of Justice filed a motion to: (1) file out of time; and (2) to dismiss the case for lack of jurisdiction.

The DOJ<sup>29</sup> argued<sup>30</sup> that courts of appeals have jurisdiction to review Tax Court decisions pursuant to 26 U.S.C. § 7482(a) but that that jurisdiction is subject to the *finality rule* established by 28 U.S.C. § 1291; see, *Broadway v. Commissioner*, 111 F. 3d 593, 595 (8<sup>th</sup> Cir. 1997).

The DOJ also argued, inter alia, that *good cause* existed for filing the motion outside of the 14-day period under 8<sup>th</sup> Cir. R. 47A(b).

The Francis' Family argued<sup>31</sup> that the finality of the Tax Court's decision was immaterial because the Tax Court lacked jurisdiction.

---

<sup>28</sup> The case was docketed on December 8, 2017, and entered December 10, 2017; see docket report.

<sup>29</sup> Department of Justice, DOJ hereinafter

<sup>30</sup> Page 4, MOTION TO DISMISS FOR LACK OF JURISDICTION AND FOR LEAVE TO FILE OUT OF TIME, January 11, 2018.

<sup>31</sup> APPELLANTS' OPPOSITION TO APPELLEE'S MOTION TO DISMISS FOR LACK OF JURISDICTION AND FOR LEAVE TO FILE OUT OF TIME DATED JANUARY 11, 2018

Namely, the Francis' Family argued the Tax Court had usurped personal jurisdiction.

The Francis' Family also argued that the Tax Court lacked a valid *Notice of Deficiency*;

And that the Tax Court had refused to exercise their jurisdiction to determine their jurisdiction when that jurisdiction had been duly challenged.

Reference *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006); and *Wheeler's Peachtree Pharmacy, Inc., v. Commissioner*, 35 T.C. 177, 180 (1980).

Finally, the Francis' Family argued, inter alia, that the Eighth Circuit had jurisdiction to determine if the United States Tax Court had jurisdiction because jurisdiction can be challenged at any time as a dispositive issue; *Normac, Inc. & Normac International v. Commissioner*, 90 T.C. 142, 146-147 (1988).

The DOJ replied that the Francis' Family subsequently filed an amended petition requesting a determination of deficiency giving the Tax Court personal jurisdiction.

The DOJ also replied that the Francis' Family elected to proceed in Tax Court by filing the *amended petition*.

The DOJ further replied that the *Notice of Deficiency* is presumed valid and that courts generally will not look behind the statutory notice of deficiency; See *Williams v. Commissioner*, 999 F.2d 760, 763 (4<sup>th</sup> Cir. 1993).

JUDGMENT: PROCESS SIGNED BY THE COURT CLERK

The Eighth Circuit, in a JUDGMENT dated January 29, 2018, denied the DOJ's motion to file out of time but they granted the DOJ's motion for dismissal under Eighth Circuit Rule 47A(b).

The judgment did not provide a reasoned opinion – no explanation was given and the judgment was signed by the Court Clerk. See Appendix A, page 1a.

PETITION FOR REHEARING BY PANEL: CASE NO. 17-3679

The Francis Family submitted a timely Petition for Rehearing by Panel pursuant to Fed. R. App. P. 40 on February 2, 2018.

The Francis' Family questioned the Eighth Circuit's denial of the DOJ's motion to file out of time and the contradicting grant of the DOJ's motion to dismiss that was filed out of time.

Judicial economy, the Francis Family argued, dictates that disputed jurisdiction be settled prior to adjudication; guidance is to be found, as was pointed out, at Fed. R. Civ. P. 1 and Fed. R. Civ. P. 12(h)(1).

Furthermore, the Francis' Family argued that personal jurisdiction is hotly disputed and the Francis' Family's challenge to subject matter jurisdiction has been ignored by the Tax Court.



On February 13, 2018, the Eighth Circuit ordered the DOJ to reply to the jurisdictional issues<sup>32</sup> raised in the *Petition for Rehearing by Panel*.

The relevant arguments made by the DOJ in their response to the *Petition for Panel Rehearing* included that a petition for panel rehearing

\*\*\* “must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition.” See, Fed. R. App. P. 40(a)(2).

The DOJ alleged that the Francis’ Family failed<sup>33</sup> to comply with Fed. R. App. P. 40(a)(2) and referenced *Sukhov v. Gonzales*, 403 F.3d 568, 570 (8<sup>th</sup> Cir. 2005).

The DOJ’s reply to the petition for *Rehearing by Panel* also argued<sup>34</sup> that the final judgment rule was an overriding factor compared to the Francis’ Family’s argument *invoking judicial economy* in order to avoid piecemeal appeals.

The other arguments made by the DOJ in its response<sup>35</sup> were:

A. The Court correctly granted the motion to dismiss.

---

<sup>32</sup> The inference is the issue of a contradictory court order was not to be addressed in the response.

<sup>33</sup> The JUDGMENT did not offer any explanation.

<sup>34</sup> Page 7, APPELLEE’S RESPONSE TO APPELLANT’S PETITION FOR PANEL REHEARING, dated March 1, 2018.

<sup>35</sup> The response was limited to 3900 words by the court order.

B. The remaining arguments by the Francis' Family are meritless:

1. Correctness<sup>36</sup> of the Tax Court Order is not pertinent to the *finality* of the Tax Court order.
2. The Tax Court correctly ruled that it had jurisdiction and that the case was not moot.
  - a. The Notice of Deficiency & filing of amended petition conferred jurisdiction on the Tax Court.
  - b. The Francis' Family's payment of the deficiency did not deprive the Tax Court of its jurisdiction.

PROCESS SIGNED BY 8<sup>th</sup> CIRCUIT CLERK

On April 02, 2018, the Court Clerk signed an order, at the direction of the Court, denying the rehearing by panel without providing an explanation regarding the contradiction between the 8<sup>th</sup> Circuit's denial of the DOJ's motion to file out of time while simultaneously granting the DOJ's motion.

TAX COURT'S DETERMINATION

---

<sup>36</sup> That is, the correctness as that correctness relates to the Tax Court's jurisdiction to make such an order.

---

On April 13, 2018, the Tax Court entered an Order of Dismissal and Decision and thereby dismissed Case No. 9801-16 for lack of prosecution. The Eighth Circuit's Mandate was issued on April 19, 2018 for Case No. 17-3679.

SECOND APPEAL TO THE EIGHTH CIRCUIT

On July 2, 2018 the Francis' Family filed a Notice of Appeal to the Eighth Circuit and Case No. 18-2447 was docketed in the 8<sup>th</sup> Circuit on July 5, 2018.

PETITION FOR WRIT OF CERTIORARI NO. 18-51

The Francis' Family sought review of the 8<sup>th</sup> Circuit's Case No. 17-3679 by filing a petition for writ of certiorari on July 2, 2018 that was docketed July 10, 2018 and denied on October 1, 2018.

SECOND APPEAL TO THE EIGHTH CIRCUIT

August 29, 2018, the Francis' Family filed an Appellant Brief arguing that:

- (1) The Statutory Notice of Deficiency ("SNOD") did not assert a deficiency within the meaning of 26 U.S.C. § 6211(a) for purposes of giving the United States Tax Court subject matter jurisdiction under 26 U.S.C. § 6213.

- (2) The SNOD did not provide the Francis' Family with information sufficient for trial preparation making the SNOD invalid within the meaning of 26 U.S.C. § 6212.
- (3) The United States Tax Court usurped personal jurisdiction in the face of repeated challenges to the Tax Court's filing of the 2-sentence request for information as an imperfect petition.
- (4) The United States Tax Court failed to exercise its jurisdiction under 5 U.S.C. § 706(2)(F) when the Francis' Family alleged fraudulent agency actions that unfairly shifted the burden in the issuance of the SNOD.
- (5) The United States Tax Court failed to affirmatively show they had subject matter jurisdiction under 26 U.S.C. § 6213 when presented with a challenge to that jurisdiction by the Francis' Family.

On October 29, 2018, the Department of Justice ("DOJ") filed an Appellee Brief in which they argued that:

- (1) The IRS issued a valid SNOD because no particular form is required as long as it indicates a deficiency has been determined, and identifies the taxpayer, and the tax

year involved, and the amount of the deficiency. And, furthermore, that the matter is determined de novo thus making

- (2) The Francis' Family filed a timely Tax Court petition and subsequently filed an amended petition and, furthermore, that the Francis' Family was not coerced (as was argued) because they filed the amended petition.
- (3) The Francis' Family's full payment of the deficiency alleged in the SNOD was not adequate to oust the Tax Court's jurisdiction.
- (4) The Tax Court did not abuse their discretion in dismissing the Francis' Family's case for lack of prosecution – and that the Francis' Family failed to make such an argument in their opening brief.

On December 13, 2018 the Francis' Family filed a Reply Brief [4:04 PM] [Entry ID 4736009] which the 8<sup>th</sup> Circuit subsequently filed on December 18, 2018.

The Francis' Family replied that:

- (1) They had previously submitted a copy of the 2013 tax return under the provision of 26 U.S.C. § 7491(a)(1) and the burden fell upon the DOJ to show that the SNOD fell

within the meaning of 26 U.S.C. § 6211(a) and that the DOJ did not even list section 6211 in their table of authorities.

- (2) The Francis' Family re-established the arguments from their opening brief
- (3) The Francis' Family pointed out that the Tax Court had only indicated that they "MAY" dismiss Case No. 9801-16 for lack of jurisdiction and this left room for coercion because the Francis' Family already felt threatened because the Tax Court should have simply released their claim of jurisdiction.
- (4) The Francis' Family also argued that they did not need the Tax Court to protect the Francis' Family's interests as the DOJ had argued.
- (5) The Francis' Family showed how they had raised the issue of the Tax Court's abuse of discretion in the opening brief.
- (6) The Francis' Family offered 5 distinct corrections of DOJ errors in the appellee brief.
- (7) The Francis' Family showed how the elements of the DOJ's apposite case *Prairie v. Commissioner*, 469 F.2d 1085, 1086 (8<sup>th</sup> Cir. 1972) were not present in Case 18-2447 (Case No. 9801-16); and
- (8) Finally, the Francis Family showed how the DOJ's use of *QinetiQ U.S. Holdings, Inc. v. Commissioner*, 845 F.3d 555, 561

(4<sup>th</sup> Cir. 2017) was based upon O'Dwyer v. Commissioner, 266 F.2d 575 (4<sup>th</sup> Cir. 1959) that the Eighth Circuit had rejected in Robinette v. Commissioner of Internal Revenue, 439 F.3d 455 (8<sup>th</sup> Cir. 2006) that held the judicial review provisions of section 706 of the Administrative Procedure Act ("APA") are applicable to the United States Tax Court. *See* page 22 et seq of Appellant Reply Brief.

The 8<sup>th</sup> Circuit issued a judgment and PER CURIAM AFFIRMANCE on May 9, 2019, that stated in full:

"Brad and Christine Francis appeal from the tax court's dismissal—for lack of prosecution—of their challenge to the Commissioner of Internal Revenue's notice asserting an income deficiency for 2013. Following a careful review, we conclude that the tax court had jurisdiction over the case, *see Walters v. United States*, 474 F.3d 1137, 1139 (8<sup>th</sup> Cir. 2007) (lower court's determination of jurisdiction is reviewed de novo); and did not abuse its discretion by dismissing the case for lack of prosecution, *see Long v. Comm'r*, 742 F.2d 1141, 1143 (8<sup>th</sup> Cir. 1984) (per curiam) (tax court's dismissal for failure to prosecute is reviewed for abuse of discretion). Accordingly, we affirm. *See* 8<sup>th</sup> Cir. R. 47B." Footnote

recognizing Tax Court Judge excluded.  
**Emphasis added.**

On June 16, 2019, the Francis' Family petitioned the 8<sup>th</sup> Circuit for a rehearing *en banc* based on questions of exceptional importance overlooked by the 8<sup>th</sup> Circuit panel:

- (1) Can deficiency procedures (26 U.S.C. § 6211 et al) be used to assert a taxpayer has undeclared income for purposes of giving the United States Tax Court jurisdiction in a deficiency proceeding under 26 U.S.C. § 6213?
- (2) Can the United States Tax Court look behind a Notice of Deficiency under 5 U.S.C. § 706(2)(F) because allegations of unlawful agency action regarding abuse<sup>37</sup> of process bring the Notice of Deficiency into question?
- (3) Can the Tax Court file a 2-sentence question as a petition for redetermination of a deficiency, and maintain that jurisdiction, in the face of repeated objections that it was a usurpation of personal jurisdiction?

---

<sup>37</sup> The Francis' Family alleged (in the tax court) that the IRS issued the Notice of Deficiency in a hurry (circumventing administrative process) to distract them from bringing a timely suit under 26 U.S.C. § 7433 that the IRS knew was intended based upon their receipt of exhaustion of administrative remedies seeing that the statute of limitations under section 7433 is often miscalculated.



The petition for rehearing *en banc* was denied by the 8<sup>th</sup> Circuit without comment on July 8, 2019.

**BASIS OF JURISDICTION IN COURT OF FIRST  
INSTANCE: 26 U.S.C. §§ 6211; 6212; 6213; 6214**

**REASONS WHY**

**THE PETITION SHOULD BE GRANTED**

This is a call for the Court to exercise its supervisory power over the lower courts and to address important jurisdictional issues governing the United States Tax Court for which little precedent exists such as: (1) the Tax Court's duty under 5 U.S.C. § 706(2)(F) to look behind a Notice of Deficiency given allegations of agency misconduct; and (2) the limits on the definition of a deficiency at 26 U.S.C. § 6211 – can this provision at § 6211 be extended beyond determining a tax deficiency to now include undeclared income?

**REASON ONE**

The Francis' Family contends that the United States Tax Court never established subject matter jurisdiction as a necessary precedent to dismissing the action for lack of prosecution.

The face of the PER CURIAM AFFIRMANCE (PCA) indicates the Eighth Circuit panel misapprehends the authority codified at 26 U.S.C. § 6211.

- A. The PCA phrase in question is: "... asserting an income deficiency for 2013." **Emphasis added.**
- B. A valid Statutory Notice of Deficiency (SNOD) does not assert income deficiencies but rather income tax deficiencies. *See* 26 U.S.C. § 6211.
- C. However, the SNOD did errantly assert an income deficiency by arbitrarily and capriciously changing line 7 on form 1040 to include gross income (thus income deficiency) not previously declared on line 07.
- D. The statutory definition of a deficiency codified at 26 U.S.C. § 6211 provides that a deficiency is the amount by which the tax imposed by subtitle A or B (or chapter 41, 42, 43, or 44) exceeds the sum of the amount shown on the return plus amounts previously assessed (or collected without assessment as a deficiency) minus the amount of rebates which have been made.
- E. Therefore, (*See* D, *supra*) a deficiency as defined by 26 U.S.C. § 6211 is the difference between the amount shown as tax due and what that amount of tax due should be if deductions, adjustments, credits, and

exemptions were properly applied *resulting* in an adjusted gross income (not gross income).

- F. It follows, therefore, that a SNOD that does not assert a deficiency within the meaning of 26 U.S.C. § 6211 is insufficient to provide the United States Tax Court with jurisdiction under 26 U.S.C. § 6213.
- G. The Eighth Circuit panel did not offer any reasoned opinion to the parties, or this court, that justified a departure from the statutory definition of a deficiency codified at 26 U.S.C. § 6211 and adequate to impart subject matter jurisdiction to the United States Tax Court over a “deficiency” in income – rather than income tax as authorized. On its face a deficiency in income can only be construed to mean undeclared income which is not addressed under section 6211 et seq in title twenty-six.
- H. Without authority: the Francis’ Family’s gross income was changed on line 7 of form 1040 rather than a deficiency in tax being determined.
- I. “However, a valid petition may not be

filed in the Tax Court without the issuance of a valid statutory notice of deficiency.”

Midland Mortgage Co., v. Commissioner, 73 T.C. 902 (1980).

- J. The Francis' Family are entitled to judgment as a matter of law based on the face of 26 U.S.C. § 6211 but the 8<sup>th</sup> Circuit's PCA offers no reasoned explanation for why the plain meaning of the law was set aside.

## REASON TWO

The Eighth Circuit simply ignores the issue raised by the Francis' Family that the United States Tax Court failed to exercise their jurisdiction under 5 U.S.C. § 706(2)(F).

The House Judiciary Committee Report specifically cites income tax redeterminations as subject to section 706(2)(F):

“The sixth category, respecting the establishment of facts upon trial de novo, would require the reviewing court to determine the facts in any case of adjudication not subject to sections 7 and 8 or otherwise required to be reviewed exclusively on the record of a statutory agency hearing \* \* \* Thus, adjudications such as tax assessments not made upon a statutory administrative hearing and record

may involve a trial of the facts in The Tax Court or the United States district courts.”

See H. REP. NO. 79-1980, pt. 4 § 10(E) (1946) (report of the House Judiciary Committee), reprinted in S. DOC. NO. 79-248, at 279 (1946) (Legislative History of the Administrative Procedure Act).

- A. The 8<sup>th</sup> Circuit’s PCA states in relevant part: “Following a careful review, we conclude that the tax court had jurisdiction over the case.”
- B. It follows that the 8<sup>th</sup> Circuit must have included (in this determination) the jurisdiction under 5 U.S.C. § 706(2)(F) since it was an issue raised by the Francis’ Family.
- C. However, the Tax Court’s repeatedly failed to exercise jurisdiction under 5 U.S.C. § 706(2)(F) and the 8<sup>th</sup> Circuit’s PCA did not address this failure or its harms.
- D. The Tax Court’s failure to exercise jurisdiction under 5 U.S.C. § 706(2)(F) harmed the Francis’ Family, inter alia, in the Tax Court’s initial determination to Strike portions of the

Francis' Family's Tax Court petition [Tax Court Document 0015]. The Francis' Family alleged misconduct, and fraud, by the Internal Revenue Service but the Tax Court granted the motion to strike those allegations of agency wrong doing [Tax Court Document 0011] despite the Francis' Family's attempts to show the fraudulent nature of the actions of the Internal Revenue Service [e.g. Tax Court Documents 0013 and 0014].

- E. The fraudulent actions by the Internal Revenue Service unfairly shifted the burden of proof onto the Francis' Family. Furthermore, the Francis' Family alleged the IRS actions were tantamount to abuse of process and were brought for improper purposes outside of statutory authority and without proper administrative process. The Tax Court was willfully blind to such issues raised by the Francis' Family and the Eighth Circuit sanctioned that willful blindness with silence in the PCA.
- F. Therefore, the PCA is, at best, ambiguous, when it comes to the issue raised regarding the United States Tax Court's duty, and jurisdiction, at 5 U.S.C. § 706(2)(F) to look behind a SNOD at allegations of agency misconduct.

- G. A PCA is by its nature not an opinion. But, on its face, the briefs raise issues that require a reasoned opinion regarding the duties and possible failure to act under authority of 5 U.S.C. § 706(2)(F).

### **REASON THREE**

The Eighth Circuit does not provide a reasoned opinion regarding the issue of personal jurisdiction.

The 8<sup>th</sup> Circuit's PCA states in relevant part: "Following a careful review, we conclude that the tax court had jurisdiction over the case."

- A. It follows that the 8<sup>th</sup> Circuit must have included (in this determination) personal jurisdiction since it was an issue raised by the Francis' Family.
- B. However, the 8<sup>th</sup> Circuit fails to discuss the Tax Court's ambiguous treatment of the Francis' Family's challenges to the Tax Court's personal jurisdiction over the Francis' Family in the presence of repeated challenges.
- C. The Tax Court simply ignored the Francis' Family's challenges to personal jurisdiction and the 8<sup>th</sup> Circuit has likewise left the topic in a very ambiguous place.

- D. The 8<sup>th</sup> Circuit fell short by using a minimalist PCA that left important issues unaddressed such as why the Tax Court had personal jurisdiction over the Francis' Family in the face of objections, allegations of coercion, and the Tax Court's permissive language (may) indicating it had retained personal jurisdiction.

### REASON FOUR

The Eighth Circuit's PCA does not meet the requirements of justice or of due process. Under the circumstances the 8<sup>th</sup> Circuit's PCA might be considered nonfeasance given the issues raised – confidence in the Judicial System is at stake.

The Eighth Circuit has a duty to provide a reasoned opinion as an element of due process unless they can defend affirming a judgment without an opinion – typically outlined within the PCA.

The Eighth Circuit's PCA does not offer any reasoning – just a naked judgment. However, the faces of the briefs raise important issues of jurisdiction (e.g. 26 U.S.C. § 6211 and 5 U.S.C. 706(2)(F)) that require a reasoned opinion as a matter of justice and due process.

The PCA offered by the Eighth Circuit is a naked judgment that appears to be arbitrary and capricious. The PCA also uses a phrase “income deficiency” that is contrary to the authority to



determine a “tax deficiency” provided at 26 U.S.C. §6211 – without an explanation of any magnitude.

Under the circumstances, due process requirements are compelling; the Eighth Circuit abuse of the local rule for PER CURIAM AFFIRMANCE is seen in its nature as unnecessarily short, obtuse, and ambiguous in the quasi explanations defending their determination that no opinion is necessary.

On its face, an explanation – that is an opinion – is necessary to justify enlarging the authority provided at 26 U.S.C. § 6211 to include the power to declare when someone has undeclared income – not just miscalculated tax.

Or, an explanation (opinion) is equally necessary to due process, when determining that a Court can ignore its duties under 5 U.S.C. § 706(2)(F).

## CONCLUSION

The petition for writ of certiorari to the Eighth Circuit should be granted because the Eighth Circuit has failed in its duties to provide due process in the form of a reasoned opinion on the issues raised.

Respectfully, the Court should provide the Eighth Circuit with guidance on the Tax Court’s jurisdiction under 5 U.S.C. § 706(2)(F) and the limits of authority for a SNOD under 26 U.S.C. § 6211.

Respectfully,

July 26, 2019

► <u>/s/ Brad S. Francis</u>	► <u>/s/ Christine C. Francis</u>
Brad S. Francis	Christine C. Francis
9704 North Holmes St.	9704 North Holmes St.
Kansas City, MO 64155	Kansas City, MO 64155

#### DECLARATION

I, Brad S. Francis, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the statements in this petition for a writ of certiorari are true and correct.

Executed this 26<sup>th</sup> day of July 2019, in Kansas City, Missouri.

► /s/ Brad S. Francis  
Brad S. Francis, pro se  
9704 North Holmes Street  
Kansas City, MO 64155-2098  
Mobile: (816) 812-3600  
E-Mail: all4\_laissez.faire@yahoo.com

## DECLARATION

I, Christine C. Francis, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the statements in this petition for a writ of certiorari are true and correct.

Executed this 26<sup>th</sup> day of July 2019, in Kansas City, Missouri.

► /s/ Christine C. Francis  
Christine C. Francis, pro se  
9704 North Holmes Street  
Kansas City, MO 64155-2098  
Mobile: (816) 812-3600  
E-Mail: all4\_laissez.faire@yahoo.com