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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[Filed August 15, 2019]

No. 18-2426

LOUIS S. SHUMAN; SANDRA SHUMAN,
Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee.

No. 19-1242

LOUIS S. SHUMAN; SANDRA SHUMAN,
Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee.

Appeals from the United States Tax Court. (Tax Ct. Nos. 015847-14L; 027857-13)

Submitted: July 29, 2019 Decided: August 15, 2019

Before WYNN and FLOYD, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Louis S. Shuman, Sandra Shuman, Appellants Pro Se. Janet A. Bradley, Arthur Thomas Catterall, Gretchen M. Wolfinger, Francesca Ugolini, UNITED STATES DEPARTMENT OF JUSTICE, Tax Division, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In Appeal No. 18-2426, Louis S. Shuman and Sandra Shuman appeal from the tax court's orders upholding the Commissioner of Internal Revenue's proposed levy action with respect to their self-reported income tax liability for the 2011 tax year and denying their motion for reconsideration. In Appeal No. 19-1242, the Shumans appeal from the tax court's orders upholding the Commissioner's determination of a deficiency in their 2011 income taxes, and denying their motion for reconsideration. We have reviewed the records in these appeals and find no abuse of discretion and no reversible error. Accordingly, we affirm for the reasons stated by the tax court. *Shuman v. Comm'r of Internal Revenue*, No. 15847-14L (T.C. Aug. 23, 2018, Nov. 30, 2018); *Shuman v. Comm'r of Internal Revenue*, No. 27857-13 (T.C. Aug. 23, 2018, Dec. 3, 2018, Dec. 7, 2018). We deny the Shumans' motions for production of documents and for a stay of enforcement pending

resolution of these appeals. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed August 15, 2019]

No. 18-2426 (L)
(015847-14L)

LOUIS S. SHUMAN; SANDRA SHUMAN,
Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee.

No. 19-1242
(027857-13)

LOUIS S. SHUMAN; SANDRA SHUMAN,
Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee.

J U D G M E N T

In accordance with the decision of this court, the judgments of the tax court are affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX B

T.C. Memo. 2018-135

UNITED STATES TAX COURT

Docket Nos. 27857-13, 15847-14L.

[Filed August 23, 2018]

LOUIS S. SHUMAN AND SANDRA SHUMAN,)
Petitioners)
)
v.)
)
COMMISSIONER OF INTERNAL REVENUE,)
Respondent)

Louis S. Shuman, prose.

Alex Shlivko, for respondent.

MEMORANDUM FINDINGS
OF FACT AND OPINION

GALE, Judge: This proceeding involves two cases that have been consolidated for trial, briefing, and opinion. In the first, at docket No. 27857-13, **[*2]** petitioners[1] seek redetermination of respondent's

[1] Petitioner Sandra Shuman failed to appear for trial, whereupon respondent moved to dismiss as to her for failure to properly prosecute. On brief, respondent treats both petitioners as having

determination of a deficiency of $88,613 and a section 6662(a) accuracy-related penalty of $17,723 with respect to petitioners' Federal income tax for 2011.[2] In the second, at docket No. 15847-14L, petitioners seek review of a determination by the Office of Appeals (Appeals) of the Internal Revenue Service (IRS) to proceed with a levy to collect $40,277 in Federal income tax that petitioners reported as due on their joint Federal income tax return for 2011.[3] After concessions,[4] the following issues **[*3]** remain for decision: (1) whether respondent properly disallowed a $197,337 casualty loss deduction claimed on the 2011 return;

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issues pending in these cases. We therefore treat respondent as having abandoned his motion.

[2] Unless otherwise noted, all section references are to the Internal Revenue Code of 1986 (Code), as amended and in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure. All dollar amounts have been rounded to the nearest dollar.

[3] Respondent's account transcript indicates that he assessed $40,277 in Federal income tax for petitioners' 2011 taxable year. However, petitioners reported $40,543 in tax due on the 2011 return. The parties have offered no explanation for the apparent discrepancy. We therefore treat the amount by which the higher figure exceeds the lower as respondent's concession of a reduction in the deficiency by that amount.

[4] Petitioners concede that they failed to report gross receipts of $1,349 and that they were not entitled to a claimed home mortgage interest deduction of $62,154 for 2011. Respondent concedes the sec. 6662(a) penalty with respect to the underpayments arising from the foregoing. Respondent further concedes his determination that petitioners failed to report $17,469 of wage income (and consequently the associated sec. 6662(a) penalty).

(2) whether respondent properly disallowed a $566,889 credit, for 2011 estimated tax payments and amounts applied from the 2010 return, claimed on the 2011 return; (3) whether petitioners are liable for a section 6662(a) accuracy-related penalty with respect to the underpayment arising from the disallowance of the casualty loss deduction claimed on the 2011 return; and (4) whether the determination by Appeals to proceed with the proposed levy to collect the 2011 income tax liability as reported by petitioners was an abuse of discretion.

FINDINGS OF FACT

Some of the facts have been stipulated and, together with the exhibits attached thereto, are incorporated herein by this reference. At the time the petitions were filed in these cases, petitioners resided in Maryland.

I. 2010 return

A. Original 2010 return

Petitioners (who were spouses) timely filed a 2010 joint Federal income tax return (original 2010 return), reporting taxable income of $226,830 and total tax due of $69,662. The original 2010 return reported withholding tax payments of **[*4]** $17,856 and no 2010 estimated payments or amounts applied from 2009, resulting in total tax payments of $17,856. Petitioners reported a balance due of $52,875, consisting of $51,806 in tax and an estimated tax penalty of $1,069. Petitioners did not refer to or claim a deduction for a casualty loss on the original 2010 return.

B. Amended 2010 returns

Petitioners submitted two amended returns for the 2010 taxable year (first and second 2010 amended return, respectively).

1. First 2010 amended return

The first 2010 amended return reported an approximately $30,000 decrease in taxable income, stating that it reflected a correction "for professional/consultant fees (2010 Schedule C adjustment: $30,000)." The return also reported reductions of $20,087 and $803 in income and employment tax, respectively, without apparent explanation. The return also reported a previously undisclosed estimated tax payment of $618,403, explaining the newly claimed payment as follows: "Correction of returns for 2005-2009, to correct payments properly applied to 2005-2009 resulted in payments reflected on this amended return. * * * These corrections arise from taxpayer(s) [sic] stock option income being taxed without deduction for stock option basis." Petitioners added their previously reported **[*5]** withholding of $17,856 to the newly claimed estimated tax payments of $618,403, applied that sum ($636,259) against the reported total tax due of $48,772, and claimed the difference of $587,487 as an overpayment. The return elected that the claimed $587,487 overpayment be applied toward petitioners' 2011 estimated tax.

Petitioners attached to the first 2010 amended return a 12-page letter asserting that as a result of amended returns completed for the 2005 to 2009

taxable years, they were entitled to the amount claimed as an overpayment. In the attached letter, petitioners also asserted that they were entitled to a "business loss" deduction under section 165 for 2010 because that was the year in which the "taxpayer became aware, for the first time, of the substantial losses incurred because tax professionals, that prepared taxpayer's returns, did not reduce stock option income by stock option basis." The letter included the following, which it characterized as a calculation of the claimed loss:

> 1. $641,345, as set out in Atch 06, and Atch 001-2005;[5]
> 2. Increased overpayments of state-local taxes approximated at: $60,750;
> 3. Forced sale of taxpayers [sic] Potomac, Md home, with resulting closing costs approximating: $20,000; and loss of equity in home approximating: $400,000.
> **[*6]** 4. Subsequent purchase of home, with closing costs approximating: $20,000.
> 5. Purchase of home, approximately 1/2 the value of the Potomac MD home, with no equity, and increased mortgage; difference in cost of Potomac mortgage payments and Chevy Chase payments (2006-2010), approximating: $225,000.
> 6. Total loss: $967,095.

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[5] Petitioners' letter states that "Atch 06" and "Atch 001-2005" are references to two amended returns petitioners filed for the 2005 taxable year, dated July 23, 2010, and April 16, 2012, respectively.

The attached letter stated the following with respect to the claimed loss:

> Taxpayer has no coverage for this loss, by compensation, or otherwise. If taxpayer were to make a claim, it would be in the nature of professional malpractice, and/or negligence. Taxpayer has abandoned any such claims, because, in addition to the time and expense of suing, taxpayer would be required to sue several attorney, and accountant, firms including persons with very close relationships to immediate family members. The destructive effect of such actions would only further damage, if not irreparably damage, already damaged family relationships.

The sale of the Potomac, Maryland, residence, for which petitioners claimed a loss for 2010, occurred in 2005.

2. Second 2010 amended return

The second 2010 amended return reported a decrease in taxable income from $226,830 to –$202,461, with the following explanation:

> 2. Line 1 adjustments: (a) professional consult fees/employment: $30,000;
>
> (b) IRC 165 business casualty loss arising from prior returns not deducting cost basis of stock options from income derived from stock options. Loss amount: $399,873 ([$]344,215.41 lost equity from sale of Potomac, MD home; $40,073 apportioned closing costs from sale of Potomac, MD home; [$]15,585

apportioned closing costs-purchase-Chevy Chase, MD home).

[*7] The return reported that the $69,662 of tax reported as due on the original 2010 return was reduced by $63,555. But instead of reporting the remaining difference of $6,107 as the correct amount of total tax due, petitioners reported – $197,337 as the correct amount.

The return also reported a new and previously undisclosed estimated tax payment of $549,033, without explanation, and added it to the $17,856 of withholding reported on the original 2010 return, for a total of $566,889, which was claimed as an overpayment. The return elected that the claimed $566,889 overpayment be applied to petitioners' 2011 estimated tax.

3. Denial of refund

The parties have stipulated that to the extent petitioners submitted claims for refunds or overpayments for 2010, respondent denied them. As of September 15, 2014, petitioners' Federal income tax account transcript for 2010 showed a balance due, including accrued interest and penalties, of $72,220.

II. 2011 return

Petitioners prepared and filed the 2011 Form 1040, U.S. Individual Income Tax Return, reporting total tax due of $40,543. On line 63 ("2011 estimated tax payments and amount applied from 2010 return") petitioners reported tax payments of $566,889, that is, the amount of the overpayment claimed on the **[*8]**

second 2010 amended return. Petitioners claimed the difference between these two figures, $526,346, as a refund.

For 2011 petitioner Louis S. Shuman (Dr. Shuman), a dentist, had no Federal income tax withheld from his wages,[6] and petitioners made no Federal income tax payments of any kind. Petitioners' Federal income tax transcript for 2011 reflects no credits from prior years.

Petitioners filed a Schedule C with the 2011 return covering Dr. Shuman's business, identified on the Schedule C as "Orthodontist/Lecturer/Researcher". Petitioners reported gross income on the Schedule C of $386,200. Under "Other Expenses", petitioners claimed a $197,337 deduction for "IRC 165-business casualty loss carryover from: 2010". Petitioners filed a Schedule A, Itemized Deductions, with the 2011 return but did not report a casualty loss on line 20 ("Casualty or theft loss(es)") or attach Form 4684, Casualties and Thefts, as Schedule A instructs. Aside from the aforementioned deduction claimed on Schedule C, the 2011 return provided no information concerning the purported casualty loss.

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[6] During 2011 Dr. Shuman was an employee, earning wages of $167,470. As discussed above, Dr. Shuman also filed a Schedule C, Profit or Loss From Business, with the 2011 return, reporting $386,200 in gross income from a Schedule C business. Petitioner Sandra Shuman did not report any wages but did file a Schedule C with the 2011 return, reporting a $1,313 net profit from a business identified on the Schedule C as "Design".

[*9] III. Notice of deficiency

On August 27, 2013, respondent issued a notice of deficiency, determining a deficiency of $88,613 and a section 6662(a) accuracy-related penalty of $17,723 with respect to petitioners' 2011 Federal income tax. The notice disallowed the $197,337 casualty loss deduction claimed on the 2011 return. The notice also stated that "based on the exam there is no evidence to support the prior year over-assessment in the amount of $566,889.00. As a result there are no payments applied to the total tax owed for tax year 2011." Petitioners timely petitioned for a redetermination of the deficiency.

IV. Collection of self-reported tax for 2011

On October 1, 2013, after issuing to petitioners a notice and demand for payment of the tax reported as due on the 2011 return, respondent issued a Letter 1058, Final Notice of Intent to Levy and Notice of Your Right to a Hearing. In response, petitioners filed Form 12153, Request for a Collection Due Process or Equivalent Hearing. Petitioners' case was assigned to a settlement officer to conduct the collection due process (CDP) hearing.

The settlement officer held a conference with petitioners' representative. During the conference petitioners' representative raised no collection alternatives or arguments premised on procedural irregularities. Petitioners' representative **[*10]** raised only the following arguments: (1) petitioners had overpayments of tax for the taxable years 2003 through 2010, (2) the IRS improperly denied petitioners'

overpayment claims, (3) the settlement officer should redetermine the substance and merits of the overpayment claims, (4) the determination should be favorable to petitioners, and (5) the determination should result in the allowance of the overpayments and the issuance of a refund to petitioners to be used to pay the 2011 tax liability (with the balance refunded to petitioners). Thus, the sole issue raised during the conference was that petitioners' 2011 tax liability had been satisfied and petitioners were due a refund.

After reviewing petitioners' transcripts, the settlement officer explained to petitioners' representative that petitioners' refund claims for the prior years, including 2010, had been disallowed and that there were no overpayment credits available to offset the 2011 tax liability. The settlement officer verified that all applicable laws and administrative procedures had been followed with respect to the unpaid tax and the proposed levy. He also verified that petitioners had no available credits from prior taxable years and that they did not otherwise make any payments toward their tax liability for 2011.

[*11] V. Notice of determination

On June 6, 2014, Appeals issued a notice of determination sustaining the proposed levy action to collect the self-assessed 2011 tax liability. The notice stated that petitioners had offered no collection alternatives and that the refunds petitioners claimed in amended returns for prior years--which petitioners had argued satisfied the 2011 tax liability--had been denied. Finally, the notice stated that because petitioners had not offered an acceptable alternative to

satisfy the 2011 tax liability, the proposed collection action was no more intrusive than necessary and therefore balanced petitioners' concerns with the IRS' interest in the efficient collection of taxes. Petitioners timely petitioned for review of the determination.

OPINION

I. Deficiency determination

Petitioners have petitioned for a redetermination of the deficiency and section 6662(a) accuracy-related penalty respondent determined for 2011. After concessions, the deficiency remaining at issue arises in part from respondent's disallowance of a $197,337 casualty loss deduction. The notice of deficiency also noted that there was no evidence to support petitioners' claim on the 2011 return of **[*12]** a "credit elect overpayment"--i.e., an overpayment of tax from 2010 that petitioners elected to apply towards their 2011 Federal income tax--of $566,889.[7]

A. Casualty loss

In general, the Commissioner's determination of a deficiency is presumed correct, and the taxpayer bears

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[7] A taxpayer may elect to apply all or part of the overpayment shown on his return to his estimated income tax for the succeeding taxable year. See sec. 6402(b); Weber v. Commissioner, 138 T.C. 348, 356-357 (2012); sec. 301.6402-3(a)(5), Proced. & Admin. Regs. "The subject of such an election is known as a 'credit elect overpayment' or simply a 'credit elect.'" FleetBoston Fin. Corp. v. United States, 483 F.3d 1345, 1347 (Fed. Cir. 2007). The taxpayer's election, however, is not binding on the IRS. See Weber v. Commissioner, 138 T.C. at 356-357; sec. 301.6402-3(a)(6), Proced. & Admin. Regs.

the burden of proving it incorrect. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933).[8] Deductions are a matter of legislative grace, and taxpayers bear the burden of proving that they have met all requirements necessary to be entitled to the claimed deductions. Rule 142(a); INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992). Moreover, deductions are to be narrowly construed, and taxpayers bear the burden of proving that the claimed deduction falls within the ambit of the cited statutory provision. Deputy v. **[*13]** du Pont, 308 U.S. 488, 493 (1940); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934).

Section 165(a) generally allows a deduction for any loss sustained during the taxable year if it is not compensated for by insurance or otherwise. In the case of an individual, however, the general rule is restricted to: (1) losses incurred in a trade or business; (2) losses incurred in a transaction entered into for profit, though not connected to a trade or business; and (3) losses of property not connected with a trade or business or a transaction entered into for profit, where the losses "arise from fire, storm, shipwreck, or other casualty, or from theft." Sec. 165(c).

On Schedule C of the 2011 return, in connection with Dr. Shuman's dental practice, petitioners claimed a $197,337 deduction for "IRC 165-business casualty loss carryover from: 2010". Petitioners filed a

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[8] Petitioners contend for the first time in a posttrial submission that they are entitled to a shift in the burden of proof to respondent under sec. 7491(a). However, a taxpayer's entitlement to such a shift requires that he have substantiated all items. Sec. 7491 (a)(2)(A). Petitioners have not done so.

Schedule A with the 2011 return but did not report a casualty loss thereon or attach Form 4684 as directed by Schedule A. In fact, the 2011 return did not provide any information concerning the purported casualty loss beyond the skeletal description on Dr. Shuman's Schedule C, which characterized it as a "casualty loss carryover from: 2010". The 2010 return did not claim a casualty loss deduction, or even reference a casualty loss, for that matter.

[*14] As noted supra pp. 4-7, petitioners submitted two amended returns for 2010.[9] The inception of the claim that later manifested itself as a casualty loss deduction on the 2011 return appears to have been on the first 2010 amended return, where petitioners claimed a "business loss" deduction under section 165 for "substantial losses incurred because tax professionals, that prepared taxpayer's returns, did not reduce stock option income by stock option basis." The first 2010 amended return set forth a calculation of the "business loss" consisting of approximations of various costs associated with the 2005 sale of petitioners' personal residence.

The second 2010 amended return provided a similar explanation for the purported loss:

> IRC 165 business casualty loss arising from prior returns not deducting cost basis of stock options from income derived from stock options.

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[9] Respondent, acting within his discretion, see Badaracco v. Commissioner, 464 U.S. 386, 393 (1984), did not accept either of the two amended returns for 2010 or grant the refunds claimed therein.

> Loss amount: $399,873 ([$]344.215.41 lost equity from sale of Potomac, MD home; $40,073 apportioned closing costs from sale of Potomac, MD home; [$]15,585 apportioned closing costs-purchase Chevy Chase, MD home).

Respondent argues that petitioners have not established legitimate grounds for claiming a deduction for the purported casualty loss or supported it with adequate substantiation. Petitioners now concede on brief that the casualty loss is not related to Dr. Shuman's business but contend that it is nevertheless deductible **[*15]** on three different grounds, alternatively arguing that it represents: (1) the loss in equity from the sale of petitioners' residence to pay taxes that were not legitimately owed; (2) the abandonment of a negligence claim against return preparers who inaccurately reported the value of stock options granted to Dr. Shuman, resulting in overpayments of taxes; or (3) a form of compensation for refund claims for those overpayments barred by the statute of limitations.[10]

As noted above, petitioners have now conceded that the claimed loss was not incurred in a trade or business, and the factual grounds they have cited for the loss lack the requisite connection to a transaction entered into for profit. Consequently, if petitioners' claim is to be sustained, it must be as a loss of property

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[10] We note that the amount claimed as a casualty loss, i.e., $197,337, matches the amount reported as an overpayment on the second 2010 amended return.

"aris[ing] from fire, storm, shipwreck, or other casualty, or from theft."

The term "other casualty" in section 165(c)(3) is not expressly defined in either the statute or the regulations. This Court construes the term by applying the rule of ejusdem generis. Maher v. Commissioner, 76 T.C. 593, 596 (1981), aff'd, 680 F.2d 91 (11th Cir. 1982); Dodge v. Commissioner, 25 T.C. 1022, 1024 (1956). Under this rule, general words that follow the enumeration of specific classes are construed as applying to things of the same general class as those enumerated. Thus, in order for the loss to be deductible, the taxpayer must prove that the **[*16]** destructive event or happening was similar to a fire, storm, or shipwreck. Accordingly, "other casualty" denotes "an undesigned, sudden and unexpected event", Durden v. Commissioner, 3 T.C. 1, 3 (1944) (quoting Webster's New International Dictionary), or a "sudden, cataclysmic, and devastating loss", Popa v. Commissioner, 73 T.C. 130, 132 (1979). Conversely, the term "excludes the progressive deterioration of property through a steadily operating cause." Fay v. Helvering, 120 F.2d 253 (2d Cir. 1941), aff'g 42 B.T.A. 206 (1940).

Petitioners' first argument--that the claimed casualty loss deduction arises from the equity petitioners lost on the sale of their personal residence--has no merit. The law is well established that a deduction is not allowable under section 165(a) for a loss suffered on the sale of a personal residence. See Austin v. Commissioner, 35 T.C. 221 (1960), aff'd, 298 F.2d 583 (2d Cir. 1962); Meyer v. Commissioner, 34

T.C. 528 (1960); Wilkes v. Commissioner, 17 T.C. 865 (1951); Koehn v. Commissioner, 16 T.C. 1378 (1951); sec. 1.165-9(a), Income Tax Regs.[11]

Petitioners' second and third arguments--that the casualty loss deduction arises from the abandonment of a negligence claim against their former return **[*17]** preparers or is compensation for refunds barred by the statute of limitations--are also without merit. Courts have repeatedly ruled that "physical damage or destruction of property is an inherent prerequisite in showing a casualty loss." Citizens Bank of Weston v. Commissioner, 28 T.C. 717, 720 (1957), aff'd, 252 F.2d 425 (4th Cir. 1958); see also Kamanski v. Commissioner, 477 F.2d 452 (9th Cir. 1973), aff'g T.C. Memo. 1970-352; Pulvers v. Commissioner, 48 T.C. 245 (1967), aff'd, 407 F.2d 838 (9th Cir. 1969); Torre v. Commissioner, T.C. Memo. 2001-218, aff'd, 52 F. App'x 965 (9th Cir. 2002); Chamales v. Commissioner, T.C. Memo. 2000-33. Neither petitioners' second argument nor their third involves a loss of property arising from the physical damage or destruction thereof. Moreover, to the extent petitioners' claim arises from speculative economic losses, such a claim is beyond the scope of section 165(c)(3). "The term 'losses of property' in section 165(c)(3) does not include a taxpayer's monetary payment to a third party or a decrease in the

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[11] We note in addition that the evidence in the record establishes that the residence that purportedly gave rise to the casualty loss deduction petitioners claimed was sold in 2005, yet petitioners did not actually claim the deduction until 2010. A deduction for a casualty loss must be claimed for the taxable year in which the loss is sustained. See secs. 1.165-1(d)(1), 1.165-7(a)(1), Income Tax Regs.; see also Hunter v. Commissioner, 46 T.C. 477, 492 (1966).

taxpayer's net worth." Pang v. Commissioner, T.C. Memo. 2011-55, slip op. at 8; see also Furer v. Commissioner, 33 F.3d 58 (9th Cir. 1994) (holding that the taxpayers' losses "were the result of fluctuation in the market and not the result of any physical injury to the* * * [taxpayers'] property" and were therefore not casualty losses), aff'g T.C. Memo. 1993-165; Dosher v. United States, 730 F.2d 375, 377 (5th Cir. 1984) (holding that "'property' as used **[*18]** in § 165(c)(3) includes money only if the actual currency or coinage is physically damaged or destroyed by the enumerated or implied casualties"). We therefore sustain respondent's disallowance of the casualty loss deduction petitioners claimed on the 2011 return.

B. Credit elect overpayments

On line 63 ("2011 estimated tax payments and amount applied from 2010 return") of the 2011 return, petitioners reported a credit elect overpayment of $566,889, that is, the amount claimed as an overpayment on the second 2010 amended return. Petitioners claim that this represents the amount by which they overpaid their Federal income tax for the taxable years 2003 through 2010. In the notice of deficiency, respondent noted that there was no evidence to support petitioners' claimed credit elect overpayment.

Petitioners--citing sections 6214(b) and 6512(b)--argue that we have deficiency jurisdiction to determine the alleged prior-year overpayments and apply them for 2011. Respondent argues that petitioners incorrectly describe and apply the relevant law. We agree with respondent.

The Tax Court is a court of limited jurisdiction, and we may exercise jurisdiction only to the extent expressly authorized by Congress. Sec. 7442; see also GAF Corp. & Subs. v. Commissioner, 114 T.C. 519, 521 (2000); Henry **[*19]** Randolph Consulting v. Commissioner, 112 T.C. 1, 4 (1999); Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Our jurisdiction to redetermine the amount of a deficiency is premised on the issuance of a valid notice of deficiency followed by a timely filing of a petition. Secs. 6212(a), 6213(a), and 6214(a); see also GAF Corp. & Subs. v. Commissioner, 114 T.C. at 521. Once validly exercised, our "jurisdiction extends to the entire subject matter of the correct tax for the taxable year", Naftel v. Commissioner, 85 T.C. at 533, including the taxpayer's claim of an overpayment of tax, see sec. 6512(b)(1).

In determining the correct tax for the taxable year, section 6214(b) allows us to "consider such facts with relation to the taxes for other years * * * as may be necessary" but expressly deprives us of "jurisdiction to determine whether or not the tax for any other year * * * has been overpaid or underpaid."

We have previously construed section 6214(b) as granting us the authority for "computing, as distinguished from 'determining,' the correct tax liability for a year not in issue when such a computation is necessary to a determination of the correct tax liability for a year that has been placed in issue." Lone Manor Farms, Inc. v. Commissioner, 61 T.C. 436, 440 (1974), aff'd, 510 F.2d 970 (3d Cir. 1975).

The relief petitioners request would require us to determine whether their Federal income tax was

overpaid or underpaid for eight years that are not at issue **[*20]** in this proceeding (that is, respondent has not determined any deficiency for any of those years such that this Court would have had jurisdiction if petitioners had timely petitioned for a redetermination with respect to those years). This we cannot do. It is well settled that our jurisdiction to determine an overpayment in a deficiency case extends only to the year before the Court. See secs. 6214(b), 6512(b)(1); Commissioner v. Gooch Milling & Elevator Co., 320 U.S. 418, 420-421 (1943); Patronik-Holder v. Commissioner, 100 T.C. 374, 377 (1993); Kaplan v. Commissioner, T.C. Memo. 2016-149; Kupersmit v. Commissioner, T.C. Memo. 2014-129; Solberg v. Commissioner, T.C. Memo. 2011-221; Porter v. Commissioner, T.C. Memo. 2010-154; Stewart v. Commissioner, T.C. Memo. 1998-319. The only year covered by the notice of deficiency is 2011. We therefore lack deficiency jurisdiction to determine whether petitioners overpaid their tax for 2010 or any other prior year.

C. Accuracy-related penalty

Section 6662(a) and (b)(1) and (2) imposes an accuracy-related penalty of 20% on the portion of an underpayment of tax attributable to negligence or disregard of rules or regulations, or a substantial understatement of income tax. "Negligence" includes any failure to make a reasonable attempt to comply with the internal revenue laws or to exercise reasonable care in the preparation of a tax **[*21]** return. Sec. 6662(c); sec. 1.6662-3(b)(1), Income Tax Regs. "Disregard" includes any careless, reckless, or intentional disregard of the Code, regulations, or

certain IRS administrative guidance. Sec. 6662(c); sec. 1.6662-3(b)(2), Income Tax Regs. A substantial understatement of income tax is defined as an understatement of tax that exceeds the greater of 10% of the tax required to be shown on the return or $5,000.[12] Sec. 6662(d)(1)(A). In the notice of deficiency, respondent determined that petitioners are liable for a section 6662(b)(1) negligence penalty and a section 6662(b)(2) substantial understatement penalty with respect to the underpayment arising from the disallowance of the casualty loss deduction claimed on the 2011 return.[13]

[*22] We initially must determine whether respondent has satisfied the written supervisory approval requirement of section 6751(b)(1).[14] These cases were

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[12] The understatement is reduced to the extent that the taxpayer (1) has substantial authority for the tax treatment of the item or (2) has adequately disclosed his position and has reasonable basis for such position. Sec. 6662(d)(2)(B).

[13] The notice of deficiency also determined that petitioners are liable for a sec. 6662(a) accuracy-related penalty attributable to a "[s]ubstantial valuation misstatement (overstatement)", see sec. 6662(b)(3), and a "[t]ransaction lacking economic substance", see sec. 6662(b)(6). Respondent did not argue for these grounds on brief, and he has therefore abandoned them. See Mendes v. Commissioner, 121 T.C. 308, 312-313 (2003).

[14] Sec. 6751(b)(1) provides:

> No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.

tried, and the record was closed, before the issuance of our Opinion in Graev v. Commissioner (Graev III), 149 T.C. __ (Dec. 20, 2017), supplementing and overruling in part 147 T.C. 460 (2016). Graev III sets forth the history of our interpretation of section 6751(b). Suffice it to say that, after having earlier taken a contrary position, in Graev III we held that the Commissioner's burden of production under section 7491(c)[15] includes establishing compliance with the written supervisory approval requirement of section 6751(b).

In view of the Court's Opinion in Graev III, we ordered respondent to file a response addressing the effect of section 6751(b) on these cases and directing the Court to any evidence of section 6751(b) supervisory approval in the record. Respondent was unable to point to any evidence in the record that satisfies his **[*23]** burden of production to establish compliance with section 6751(b) for either the section 6662(b)(1) negligence penalty or the section 6662(b)(2) substantial understatement penalty. Respondent now concedes the negligence penalty, but seeks to reopen the record for the purpose of allowing him to submit evidence to establish that he satisfied the requirements of section 6751(b) with respect to the substantial understatement penalty.

Whether to reopen the record for the submission of additional evidence is a matter addressed to the sound

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[15] Under sec. 7491(c), the Commissioner bears the burden of production with respect to accuracy-related penalties and must come forward with sufficient evidence indicating that it is appropriate to impose them. See Higbee v. Commissioner, 116 T.C. 438, 446-447 (2001).

discretion of the Court. See Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 331-332 (1971); Deininger v. Commissioner, 313 F.2d 221, 224 (4th Cir. 1963), aff'g in part, modifying in part, and remanding T.C. Memo. 1961-212; Dynamo Holdings Ltd. P'ship v. Commissioner, 150 T.C. __, __ (slip op. at 10) (May 7, 2018); Butler v. Commissioner, 114 T.C. 276, 286-287 (2000). We may grant a motion to reopen the record only if the evidence relied on is (1) not merely cumulative or impeaching, (2) material to the issues involved, and (3) likely to change some aspect of the outcome of the case. See Butler v. Commissioner, 114 T.C. at 287; Fiedziuszko v. Commissioner, T.C. Memo. 2018-75, at *25; Azam v. Commissioner, T.C. Memo. 2018-72, at *25-*26; Sarvak v. Commissioner, T.C. Memo. 2018-68, at *20. In the event these threshold conditions are satisfied, we **[*24]** examine (1) the diligence (or lack thereof) of the moving party in submitting the evidence, (2) the possibility of prejudice to the nonmoving party if the record were reopened, and (3) where the interests of justice lie. See Levy v. Lexington Cty., 589 F.3d 708, 714-715 (4th Cir. 2009).

The evidence respondent proffers consists of the declaration of Revenue Agent (RA) Susan E. Michel (declaration) and a Civil Penalty Approval Form (penalty approval form). Respondent argues that the proffered evidence establishes that RA Michel initially determined the applicability of the substantial understatement penalty and prepared the penalty approval form and that her immediate supervisor, Group Manager (GM) Alice Polser, thereafter approved (in writing) the assertion of the penalty by executing the form. Respondent argues that the proffered

evidence is admissible pursuant to rules 803(6) and 902(11) of the Federal Rules of Evidence, which together provide for the self-authentication of records kept in the course of a regularly conducted activity of an organization.[16]

[*25] Petitioners object to the admission of the proffered evidence, arguing that the penalty approval form is facially defective. The penalty approval form provides a line labeled "Group Manager Signature", and directly adjacent thereto, a line labeled "Date". The penalty approval form includes the apparent signature of GM Polser on the line provided, but the line provided for the date is blank. Petitioners argue that "[t]his missing date, which should properly have accompanied* * * [GM] Polser's signature, thereby attesting to the actual date of her signature, is a

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[16] The declaration states that in the normal course of her duties, RA Michel: (1) initially determined that petitioners underreported and underpaid their tax liability for 2011 and that the assertion of the sec. 6662 penalty for a substantial understatement of income tax was therefore appropriate; and (2) prepared, in accordance with sec. 6751(b) and consistent with her regular practice, the penalty approval form and requested the approval of her immediate supervisor, GM Polser, which GM Polser subsequently granted by executing the penalty approval form. RA Michel declares that the penalty approval form was prepared at the time of the occurrence of the matters set forth therein. She declares that she has personal knowledge of the IRS recordkeeping system and that the penalty approval form was taken from the IRS administrative file for petitioners. She further declares that the penalty approval form was kept in the course of regularly conducted IRS activity, and that it is regular IRS practice to keep such records.

material omission, rendering the form defective on its face."

As to the threshold issue of admissibility, we agree with respondent: The penalty approval form is a record kept in the ordinary course of a business activity, and the declaration lays an adequate foundation for its admission.[17] See Fed. R. 16 **[*26]** Evid. 803(6), 902(11); Fiedziuszko v. Commissioner, at *26-*27; Sarvak v. Commissioner, at *20-*22; see also United States v. Komasa, 767 F.3d 151, 154-157 (2d Cir. 2014); United States v. Daniels, 723 F.3d 562, 579-581 (5th Cir. 2013); Clough v. Commissioner, 119 T.C. 183, 186-191 (2002). Moreover, the evidence respondent proffers is neither cumulative nor impeaching. The record is currently devoid of evidence as to whether respondent obtained the requisite supervisory approval of the initial penalty determination. In the absence of such evidence, respondent cannot meet his burden of production concerning the accuracy-related penalty. Thus, the evidence is also material.

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[17] As discussed infra pp. 26-28, we agree with petitioners' arguments as to the merits of the proffered evidence; however, those arguments go to the evidence's weight, not its admissibility. See United States v. Panza, 750 F.2d 1141, 1150-1151 (2d Cir. 1984) (finding no error where incomplete insurance company files were admitted as business records because the "incompleteness of the files went to the weight rather than to the admissibility of the evidence"); Crompton-Richmond Co., Factors v. Briggs, 560 F.2d 1195, 1202 n.12 (5th Cir. 1977) (explaining that questions concerning the "inaccuracy and incompleteness" of evidence admitted under the business records exception were "an assault on its weight, not on its admissibility").

However, we cannot conclude that the proffered evidence, if admitted, would change the outcome of these cases. Written supervisory approval of the initial penalty determination must be obtained no later than the date the Commissioner issues the notice of deficiency (or files an answer or amended answer) asserting such a penalty. See Graev III, 149 T.C. __ (Dec. 20, 2017); see also Chai v. Commissioner, 851 F.3d 190, 221 (2d Cir. 2017), aff'g in part, rev'g in part T.C. Memo. 2015-42; Endeavor Partners Fund, LLC v. Commissioner, T.C. Memo. 2018-96, at *63 ("When a penalty is asserted in a notice of deficiency * * * the Commissioner must secure supervisory approval for the penalty before issuing **[*27]** that notice to the taxpayer."). While the penalty approval form bears GM Polser' s apparent signature, the line provided for the date is blank. Thus, we cannot reliably conclude on the basis of the penalty approval form that respondent satisfied the requirements of section 6751(b) before issuing the notice of deficiency determining the penalty at issue.[18]

In her declaration, RA Michel asserts that GM Polser executed the penalty approval form "[o]n or about" the date that she requested the signature. However, the declaration is hearsay that is admissible

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[18] The penalty approval form includes a header displaying RA Michel's name and, directly below that, what appears to be a computer-generated date. The displayed date is the same date that RA Michel claims to have initially determined the penalty at issue. We agree with petitioners that the displayed date provides (at best) evidence of when RA Michel made the initial determination and prepared the penalty approval form for GM Polser's signature, not the date GM Polser actually approved that determination.

only for the purpose of authenticating the penalty approval form as a business record. See Fed. R. Evid. 801(c), 802, 803(6), 902(11); Azam v. Commissioner, at *28; First Hawaiian Bank v. Bartel, CV. No. 08-00177 DAE-LEK, 2009 WL 10676756, at *11-*14 (D. Haw. May 22, 2009) (holding that a declaration under rule 902(11) of the Federal Rules of Evidence is not itself a business record and, if offered for the truth of matter asserted therein, is inadmissible hearsay); United States v. Bryant, No. 3:04-CR-00047-01, 2006 WL 1700107, at *4 (W.D. Va. June 15, 2006) (holding **[*28]** that a "business record certification * * * does not serve independently as relevant evidence * * * ; rather, it serves merely to lay a foundation for the admission of business records"); see also 8 Michael H. Graham, Handbook of Fed. Evid. sec. 902:0 (8th ed. 2016) ("Rule 902 ***operates as a hearsay exception on the limited question of authenticity."). Respondent has not identified an exception to the hearsay rule that would permit us to admit the declaration for the purpose of establishing the date that written supervisory approval was obtained in these cases. Moreover, despite petitioners' having raised the issue of the missing date some months ago, respondent has not requested further trial proceedings or proposed any other means of bolstering the penalty approval form, which is defective on its face. Under these circumstances, we decline to exercise our discretion by ordering, sua sponte, further trial proceedings. See Azam v. Commissioner, at *28.

Even if we were to admit the proffered evidence, respondent would not meet his burden of production with respect to the penalty at issue. Because the

proffered evidence would have no impact on the outcome, we will deny respondent's motion to reopen the record. See Dynamo Holdings Ltd. P'ship v. Commissioner, 150 T.C. at__ (slip op. at 11) ("Granting such a motion would be a meaningless gesture if it would not affect the outcome, and it would be a waste of judicial resources."); Butler v. Commissioner, 114 T.C. at 287; Azam v. Commissioner, at **[*29]** *28-*29. We therefore hold that petitioners are not liable for an accuracy-related penalty for an underpayment due to a substantial understatement of income tax for 2011.

II. Proposed collection action

Petitioners have also petitioned for review of the determination by Appeals to proceed with a levy to collect the $40,277 in Federal income tax that petitioners reported as due on their 2011 return.[19]

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[19] The Commissioner is authorized to summarily assess all taxes reported by a taxpayer on a filed return. See sec. 6201(a)(1); sec. 301.6201-1(a)(1), Proced. & Admin. Regs.; see also Meyer v. Commissioner, 97 T.C. 555, 559 (1991). Courts have held that the Commissioner may--as he does here--attempt to collect taxes for a taxable year in increments, consisting of: (1) the increment that the taxpayer has reported on a return but not paid and (2) the additional increment that the Commissioner believes the taxpayer owes but did not report, i.e., the deficiency. See Fayeghi v. Commissioner, 211 F.3d 504 (9th Cir. 2000), aff'g T.C. Memo. 1998-297. Consequently, the bar on assessment (and collection) of a deficiency that applies to pending Tax Court proceedings relates only to the deficiency; assessment (and collection) of the amount of tax that the taxpayer reported on the return may proceed notwithstanding the Commissioner's determination of a deficiency for the taxpayer's same taxable year. See id.

Section 6330 provides that no levy may be made on any property or right to property of a taxpayer unless the Commissioner first notifies the taxpayer of the right to a hearing before Appeals. Sec. 6330(a) and (b). At the hearing, the taxpayer may raise any relevant issue relating to the unpaid tax or the proposed levy, including appropriate spousal defenses, challenges to the appropriateness of **[*30]** collection actions, and offers of collection alternatives. Sec. 6330(c)(2)(A); Sego v. Commissioner, 114 T.C. 604, 609 (2000); Goza v. Commissioner, 114 T.C. 176, 180 (2000). A taxpayer may contest the existence or amount of the underlying tax liability if the taxpayer did not receive a statutory notice of deficiency for the liability or otherwise have an earlier opportunity to dispute it. Sec. 6330(c)(2)(B); see also Sego v. Commissioner, 114 T.C. at 609. Following the hearing, Appeals must determine whether the Commissioner may proceed with the proposed collection action, taking into consideration, inter alia, the issues raised by the taxpayer. Sec. 6330(c)(3). We have jurisdiction to review Appeals' determination. Sec. 6330(d)(1).

Where the underlying tax liability is properly at issue, we review Appeals' determination de novo. Goza v. Commissioner, 114 T.C. at 181-182. Where the underlying tax liability is not at issue, we review the determination for abuse of discretion. Id. at 182. This Court will find an abuse of discretion has occurred in CDP cases where the determination by Appeals is arbitrary, capricious, or without sound basis in fact or law. See Giamelli v. Commissioner, 129 T.C. 107, 111 (2007).

Petitioners argue that the settlement officer erred in failing to apply against their 2011 Federal income tax liability a $566,889 credit elect overpayment they **[*31]** claimed on the 2011 return.[20] In CDP cases, we review Appeals' determination concerning a taxpayer's claim of a credit elect overpayment for abuse of discretion. See Weber v. Commissioner, 138 T.C. 348 (2012); Del-Co W. v. Commissioner, T.C. Memo. 2015-142; Precision Prosthetic v. Commissioner, T.C. Memo. 2013-110. We must therefore decide whether the settlement officer's determination that petitioners were not entitled to a credit elect overpayment of $566,889 constitutes an abuse of discretion.

In appropriate circumstances, we may determine in a CDP case whether a credit available from another taxable year should be applied to the taxpayer's liability for the year before the Court. Del-Co W. v. Commissioner, at *6. But we can do this only when a credit from another taxable year indisputably exists; we do not have jurisdiction under section 6330 to "determine an overpayment of an unrelated liability." Weber v. Commissioner, 138 T.C. at 366; see also Del-

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[20] The sole issue raised by petitioners' representative during the CDP hearing was that petitioners' 2011 tax liability had been satisfied and petitioners were due a refund. See sec. 6330(c)(2)(B). The parties have stipulated that the settlement officer verified that all requirements of applicable law and procedure had been met. See sec. 6330(c)(1). In the notice of determination, the settlement officer, noting that petitioners did not present any acceptable collection alternatives, concluded that sustaining the proposed levy appropriately balanced the need for efficient collection of taxes with petitioners' concerns regarding the intrusiveness of the levy action. See sec. 6330(c)(3)(C).

Co W. **[*32]** v. Commissioner, at *6-*7; Burt v. Commissioner, T.C. Memo. 2013-140, at *16. As we explained in Weber v. Commissioner, 138 T.C. at 371-372:

> An overpayment of a* * * [tax liability] that has been determined by the IRS or a court but has not been either refunded or applied to another liability may be an "available credit" that * * * could be taken into account in a CDP hearing to determine whether the tax at issue remains "unpaid" and whether the IRS can proceed with collection. But a mere claim of an overpayment is not an "available credit" but is instead a claim for a credit; and such a claim need not be resolved before the IRS can proceed with collection of the liability at issue. * * *

Neither the IRS nor any court has determined that petitioners have an "available credit" to claim against their 2011 Federal income tax liability. In fact, rather than an overpayment claim, petitioners' original 2010 return reported a balance due of $52,875, and as of September 15, 2014, petitioners' Federal income tax account transcript for 2010 showed a balance due, including accrued interest and penalties, of $72,220. Thus, the original 2010 return provides no support for petitioners' credit elect overpayment claim.

Petitioners did make credit elect overpayment claims on the two 2010 amended returns. The first 2010 amended return claimed an overpayment of $587,487, which petitioners elected to have applied against their 2011 tax liability. The second 2010 amended return claimed an overpayment of $566,889,

which petitioners again elected to have applied against their 2011 tax liability. However, **[*33]** the settlement officer, having reviewed petitioners' account transcripts, found that the IRS had disallowed both of petitioners' 2010 refund claims. Moreover, there is no evidence in the record that petitioners filed any suit for a refund for 2010 or made the settlement officer aware that they had done so.[21] This Court lacks jurisdiction "to make 'available' a credit that is currently not available because the IRS has disallowed it." Weber v. Commissioner, 138 T.C. at 368; see also Robinson v. Commissioner, T.C. Memo. 2017-207, at *16; Morris v. Commissioner, T.C. Memo. 2016-16, at *20-*21; Del-Co W. v. Commissioner, at *6-*8; Burt v. Commissioner, at *16-*17; Precision Prosthetic v. Commissioner, at *9 ("[T]he Court can consider only nonrefunded or not yet applied 'available' credits arising in nondetermination years when determining whether a tax liability at issue has been reduced or eliminated."); Everett Assocs., Inc. v. Commissioner, T.C. Memo. 2012-143, slip op. at 16 ("[U]ntil the credit has fully materialized, the taxpayer merely asserts a claim for credit which is beyond the scope of our jurisdiction in a CDP case.").

In sum, petitioners have not shown that they have an "available credit" for 2010 that can be taken into account in determining the extent to which the tax liability for 2011 remains unpaid. Rather, petitioners' contention that they are **[*34]** entitled to the $566,889 credit elect overpayment claimed on the 2011 return constitutes--at most--a "claim for credit", and such

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[21] In fact, at trial petitioners conceded that they had not filed any suit for refund with respect to their 2010 taxable year.

claims "need not be resolved before the IRS can proceed with collection of the liability at issue." Weber v. Commissioner, 138 T.C. at 372; see also Del-Co W. v. Commissioner, at *7-*8; Burt v. Commissioner, at *16-*18; Precision Prosthetic v. Commissioner, at *8-*10; Everett Assocs., Inc. v. Commissioner, slip. op. at 16-17.

The only issue petitioners raised during the CDP hearing involved their claim that they had overpaid their Federal income tax for prior years. The settlement officer verified that petitioners had no available credits from prior taxable years and that they did not otherwise make any payments toward their 2011 tax liability. He explained to petitioners that the refunds claimed for prior taxable years had been disallowed and that as a result there were no amounts available to reduce their 2011 tax liability. After verifying that all applicable law and procedures were followed, he concluded that sustaining the proposed levy appropriately balanced the need for efficient collection of taxes with petitioners' concerns regarding the intrusiveness of the levy action. Thus, we hold that the settlement officer did not abuse his discretion by issuing the notice of determination sustaining the proposed levy action.

[*35] To reflect the foregoing,

Decision will be entered under Rule 155 in docket No. 27857-13 and for respondent in docket No. 15847-14L.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Docket No. 15847-14L.

[Filed August 23, 2018]

LOUIS S. SHUMAN & SANDRA SHUMAN,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

DECISION

Pursuant to the determination of this Court as set forth in its Memorandum Opinion (T.C. Memo. 2018-135) filed August 23, 2018, it is hereby

ORDERED AND DECIDED that respondent may proceed with the collection action with respect to petitioners' Federal income tax liability for taxable year 2011 as determined in the notice of determination concerning collection actions(s) under section 6320 and/or 6330, upon which this case is based.

(Signed) Joseph H. Gale
Judge

ENTERED: **AUG 23 2018**

APPENDIX C

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Docket Nos. 27857-13, 15847-14L.

[Filed November 30, 2018]

LOUIS S. SHUMAN & SANDRA SHUMAN,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

O R D E R

These cases were tried and submitted at the New York, New York trial session on December 10, 2014. At that trial session, the Court reserved ruling on the admission of Exhibits 50-P and 51-P. After due consideration and for cause, it is

ORDERED that Exhibits 50-P and 51-P are deemed not admitted nunc pro tune as of August 23, 2018.

(Signed) Joseph H. Gale
Judge

Dated: Washington, D.C.
November 30, 2018

APPENDIX D

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Docket Nos. 27857-13, 15847-14L.

[Filed November 30, 2018]

LOUIS S. SHUMAN & SANDRA SHUMAN,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

ORDER

Pursuant to the determination of this Court as set forth in its Memorandum Findings of Fact and Opinion (T.C. Memo. 2018-135), filed August 23, 2018, the Court severed the consolidation of the cases at Docket Nos. 27857-13 and 15847-14 L, and entered a decision for respondent in the case at Docket No. 15847-14L. On September 24, 2018, petitioners filed a Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161,[1] wherein petitioners seek reconsideration of the Court's Opinion in these two cases.

[1] Rule references are to the Tax Court Rules of Practice and Procedure, available on the Court's website, www.ustaxcourt.gov.

In their Motion, petitioners argue that the Court ruled, in error, that "Petitioners [sic] claim of an overpayment from 2010, which Petitioners elected to apply toward their 2011 federal income tax, in the amount of $566,889 was not substantiated."

We did not reject petitioners' credit elect overpayment claim on the grounds that it was not properly substantiated. Rather, in the case at Docket No. 27857-13, we held that because the only year covered by the notice of deficiency is 2011, under section 6214(b) we "lack deficiency jurisdiction to determine whether petitioners overpaid their tax for 2010 or any other prior year." Shuman v. Commissioner, T.C. Memo. 2018-135, slip op. at 20. In the case at Docket No. 15847-14L, we held that because the Internal Revenue Service disallowed both of petitioners' 2010 refund claims, and there was no evidence in the record that petitioners filed a suit for refund or made the settlement officer aware that they had done so, petitioners failed to show that they have an "available credit", and we "lack[] jurisdiction to make 'available' a credit that is currently not available because the IRS has disallowed it." Id., slip op. at 33 (internal quotation marks and citations omitted).[2]

On November 26, 2018, petitioners filed a Notice of Appeal with respect to the case at Docket No. 15847-14L. Accordingly, it is

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[2] In their Motion, petitioners contend that Exhibit 51-P "is relevant to this case on the issue of substantiation." Because we rejected the credit elect overpayment claims in both cases on grounds other than substantiation, Exhibit 51-P is irrelevant.

ORDERED that petitioner's Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161, filed September 24, 2018, in the case at Docket No. 27857-13, is hereby denied. It is further

ORDERED that petitioners' Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161 filed September 24, 2018, in the case at Docket No. 15847-14L, is hereby denied as moot.

(Signed) Joseph H. Gale
Judge

Dated: Washington, D.C.
November 30, 2018

APPENDIX E

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Docket No. 27857-13.

[Filed December 7, 2018]

LOUIS S. SHUMAN & SANDRA SHUMAN, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

ORDER AND DECISION

On August 23, 2018, the Court filed its Memorandum Findings of Fact and Opinion (T.C. Memo. 2018-135), directing entry of decision in this case pursuant to Rule 155.[1] On November 19, 2018, and November 20, 2018, petitioners and respondent filed, respectively, Computations for Entry of Decision. As directed by the Court, respondent filed a First Supplement to Computation for Entry of Decision on December 6, 2018.

[1] Rule references are to the Tax Court Rules of Practice and Procedure.

We decline to adopt petitioners' computation. First and foremost, petitioners contend in their computation that there is a deficiency of $93,229 in their Federal income tax for the 2011 taxable year. That figure is $10,730 more than the deficiency for which respondent contends in his computation and, in fact, is $4,616 more than the deficiency respondent determined in the notice of deficiency upon which this case is based, despite the fact that respondent has conceded his determination therein that petitioners failed to report $17,469 of wage income. See Shuman v. Commissioner, T.C. Memo. 2018-135, at *2 n.4.

Second, respondent states in his supplement that petitioners erred in reporting $7,578 as a deduction for the employer-equivalent portion of self-employment tax, when they were in fact entitled to a deduction of $8,642. Petitioners' computations do not appear to account for this increased deduction.

We agree with and adopt respondent's computation.

The foregoing considered, it is

ORDERED that respondent's computation is incorporated as the findings of the Court. It is further

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioners for the taxable year 2011 in the amount of $82,499; and

That there is no penalty due from petitioners for the 2011 taxable year, under the provisions of I.R.C. section 6662(a).

(Signed) Joseph H. Gale
Judge

ENTERED: **DEC 07 2018**

APPENDIX F

UNITED STATES TAX COURT

Docket No. 27857-13
Judge Joseph H. Gale

Filed Electronically

[Filed December 6, 2018]

LOUIS S. SHUMAN & SANDRA SHUMAN, Petitioners,	)
v.	)
COMMISSIONER OF INTERNAL REVENUE, Respondent	)

SUPPLEMENT TO RESPONDENT'S COMPUTATIONS FOR ENTRY OF DECISION, FILED NOVEMBER 20, 2018

PURSUANT to the Court's Order of December 4, 2018, the following is respondent's supplement to his computations for entry of decision with an explanation resolving apparent discrepancies identified in the Order.

1. By Order dated December 4, 2018, the Court directed respondent to explain discrepancies between taxable income and tax due actually shown on the stipulated petitioners' 2011 tax return (the "return") on

the one hand, and taxable income and tax due reported as "shown" on the return in respondent's computations for entry of decision on the other hand.

2. Respondent agrees with the Court's findings in its Order.

3. By way of an explanation, and in further support of the numbers shown on respondent's computations for entry of decision, we note that taxable income shown on petitioners' 2011 tax return was indeed $132,550. Based on that number, the return reported tax due of $40,543.

4. As the Court noted in its opinion at page 2, footnote 3, however, respondent assessed tax in the amount of $40,277. Albeit left unexplained at trial or in the briefs, Exhibit 1-J, pages 1 and 9 of 10, demonstrate that the reason for the lower assessment was an arithmetical error contained in the return.

5. Self-employment tax computed on Schedule SE attached to the return (Exhibit 1-J, page 9 of 10) reported only $7,578 as a deduction for employer-equivalent portion of self-employment tax on Line 6 of the Form. The $7,578 was then entered on Line 27, page 1 of Form 1040 (Exhibit 1-J, page 1 of 10). That number contained arithmetical error – petitioners, in fact, were entitled to the deduction of $8,642, or $1,064 more than the $7,578 they deducted. That $1,064 subtracted from the taxable income of $132,550 reported on the return equals $131,486, which amount is used in respondent's computations as taxable income "shown" on the return. Assuming the Court and petitioners agree with respondent on this point,

$131,486 is the correct amount of petitioners' taxable income as [should-have-been-but-for-the-arithmetical-error] reported on the return. As a corollary, the correct amount of tax arithmetically determined to have been "shown" on the return is approximately $40,276 or $40,277, with $1 difference due to rounding.

6. Based on the foregoing, respondent believes that his submitted computations are correct.

Date: Dec 6 - 2018

WILLIAM M. PAUL
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APPENDIX G

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[Filed October 22, 2019]

No. 18-2426 (L)
(015847-14L)

LOUIS S. SHUMAN; SANDRA SHUMAN
Petitioners - Appellants

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent - Appellee

No. 19-1242
(027857-13)

LOUIS S. SHUMAN; SANDRA SHUMAN
Petitioners - Appellants

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent - Appellee

ORDER

The Court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wynn, Judge Floyd, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed October 1, 2019]

No. 18-2426 (L)
(015847-14L)

LOUIS S. SHUMAN; SANDRA SHUMAN
Petitioners - Appellants

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent - Appellee

No. 19-1242
(027857-13)

LOUIS S. SHUMAN; SANDRA SHUMAN
Petitioners - Appellants

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent - Appellee

STAY OF MANDATE UNDER
FED. R. APP. P. 41(d)(1)

Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/ Patricia S. Connor, Clerk

APPENDIX I

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[Filed October 30, 2019]

No. 18-2426 (L)
(015847-14L)

LOUIS S. SHUMAN; SANDRA SHUMAN
Petitioners - Appellants

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent - Appellee

No. 19-1242
(027857-13)

LOUIS S. SHUMAN; SANDRA SHUMAN
Petitioners - Appellants

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent - Appellee

MANDATE

The judgment of this court, entered on 08/15/2019, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedures.

/s/ Patricia S. Connor, Clerk

APPENDIX J

Form 668 (Y)(c) (Rev. February 2004)	1872 Department of the Treasury - Internal Revenue Service **Notice of Federal Tax Lien**	
Area: SMALL BUSINESS/ SELF EMPLOYED AREA #3 (800)-829-3903	Serial Number !	For Optional Use by Recording Office • This Notice of Federal Tax Lien has been filed as a matter of public record. • IRS will continue to charge penalty and interest until you satisfy the amount you owe. • Contact the Area Office Collection Function for information on the amount you must pay before we can release this lien. • See the back of this page for an explanation of your Administrative Appeal rights.
As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following- named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a		

lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.
Name of Taxpayer LOUIS S & SANDRA SHUMAN
Residence XXXX XXXXX XX CHEVY CHASE, HD 20815-4901
IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identi-fying Number (c)	Date of Assess-ment (d)	Last Day for Refiling (e)	Unpaid Balance of Assess-ment (f)
1040	12/31/2005		04/21/2008	05/21/2018	2872.07
1040	12/31/2006		09/22/2008	10/22/2018	115542.60
1040	12/31/2007		09/22/2008	10/22/2018	121892.08
Place of Filing CLERK OF THE CIRCUIT COURT MONTGOMERY COUNTY ROCKVILLE, MD 20850				Total	240306.75
This notice was prepared and signed at BALTIMORE, MD , on this, the 03rd day of July, 2009.					
Signature /s/ R.A. Mitchell for THERESA HARLEY		Title ACS 23-00-0008 (800) 829-3903			

(**NOTE:** Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)

CAT No. 60025X

Form 668 (Y)(c) (Rev. 02-04)

Part 3 - Taxpayer's Copy

APPENDIX K

Appeals Transmittal and Case Memo - CDP		Date: APR 21 2011
Route Case To: Other Internal Revenue Service 11510 Georgia Avenue Wheaton, MD 20902 Attn: Sonia D Mcpherson		From: Appeals Code: 171 AP:FE:AP:WA:ME 1099 14th Street, N.W. 4100 West Tower Washington DC 20005 202-435-5758 Ext.
Feature Codes: EH Equivalent Hearing - Lien PRIBUSCD: 203		
Taxpayer(s) SHUMAN, LOUIS S & SANDRA XXXX XXXXX XX CHEVY CHASE MD 20815-4901		WUNO-related MFT/PDS: MFT: Tx Pd(s): MFT: Tx Pd(s): MFT: Tx Pd(s):
SSN/TIN	Work unit No.: 7110225015	

Type of Case: DPLN	Category Code: CDP	
MFT/Tax Period(s) 200512/30 200612/30 200712/30		
Disposal Information: ARDI Code: 7 Closing Code: 14 Reason Code: CS - Collection Sustained Resolution Reason: OT - Other Closing Information for: Filing of Notice of Lien Sustained		
Special Features, Remarks, and/or Appeals Case Memorandum: The filing of the Notice of Federal Tax lien was appropriate and is sustained. Subsequently, the taxpayer submitted amended returns for the periods in question. Due to the amended returns there is no balance for 2006. The office of appeals will abate the estimated tax for 2007 per IRC 6654(e)(2). With the adjustment, there will be a credit. There is a small balance for 2005 which may be reduced to zero by the amended return for the period.		
ForAPS use: TC 520 reversal information: (Need TC550 If "P" or "S" on Joint account) (TC52x/Date): **Use TC 521:** Determination Letter. TC 521=Date determination becomes final ____. Form 12257 (cc04). TC 521=Date waiver signed ____. Form 12256 (cc16). TC 521=Date Appeals received withdrawal ____.		

Use TC 522 for Rescission or Premature Referral, cc20 (TC 522 date will be the same date as the TC 520):			
Taxpayer's Representative	Representative's Telephone No.	Docket No.	
AO/SO Signature /s/ Michael Edwards Michael Edwards	Date 4/5/11	Earliest Statute Date 04/21/2018 / CSED	
Approved X /s/ Lisa Boudreau Lisa Boudreau, Acting Appeals Team Manager	Date: 4/5/2011	Area Counsel	Date:

Department of the Treasury - Internal Revenue Service

Form 5402-c (Rev. 07/2006)

APPENDIX L

Internal Revenue Service
IRS Wash. Appeals Field Office
1099 14th Street, N.W.
4100 West Tower
Washington, DC 20005

Department of the Treasury

Person to Contact:
Michael Edwards
Employee ID Number: 0261132
Tel: 202-435-5758
Fax: 202-435-5750
Refer Reply to:
AP:FE:AP:WA:ME
In Re:
Collection Due Process - Lien
Taxpayer Identification Number:

Tax Period(s) Ended:
12/31/2005 12/31/2006 12/31/2007

Date: APR 21 2011

LOUIS S & SANDRA SHUMAN
XXXX XXXXX XX
CHEVY CHASE MD 20815-4901

DECISION LETTER
CONCERNING EQUIVALENT HEARING
UNDER SECTION 6320 and/or 6330
of the Internal Revenue Code

Dear Mr. & Mrs. Louis S & Sandra Shuman:

We have reviewed the proposed collection action for the period(s) shown above. This letter is our decision on your case. A summary of our decision is stated below and the enclosed statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions.

Your due process hearing request was not filed within the time prescribed under Section 6320 and/or 6330. However, you received a hearing equivalent to a due process hearing except that there is no right to dispute a decision by the Appeals Office in court under IRS Sections 6320 and/or 6330.

Your case will be returned to the originating IRS office for action consistent with the decision summarized below and described on the attached page(s).

If you have any questions, please contact Michael Edwards at the telephone number shown above.

Summary of Decision
The filing of the Notice of Federal Tax Lien was appropriate and is sustained in Appeals.

Sincerely,

/s/ Lisa Boudreau
Lisa Boudreau
Acting Appeals Team Manager

Attachment

LOUIS S & SANDRA SHUMAN
XXX-XX-XXXX

Type of Tax(es)	Tax Period(s)	Date of CDP Notice	Type of hearing	Date used to determine timeliness
Individual Income tax	12/31/2005	08/20/ 2009	6320	06/24/2010
Individual Income tax	12/31/2006	08/20/ 2009	6320	06/24/2010
Individual Income tax	12/31/2007	08/20/ 2009	6320	06/24/2010

SUMMARY AND RECOMMENDATION

The filing of the Notice of Federal Tax Lien (NFTL) was appropriate and is sustained in Appeals. Subsequently you submitted amended returns for tax years 2005 – 2007. Based on the returns, there are no balances for 2006 and 2007. There is a small balance owed for 2005. We requested you submit a collection alternative which would include periods 2005, 2008 and 2009. No collection alternative was received.

BRIEF BACKGROUND

The balances for tax years; 2006 and 2007 were the result of self-filed returns with insufficient withholdings. The balance for 2005 was the result of an additional tax assessment completed by the Internal Revenue Service's Examination Division. Subsequently you submitted an original return to reduce the balance.

In your Collection Due Process appeal, you indicated amended returns were submitted for all the periods. The returns would reflect the cost basis for stock options which would produce refunds for all three years. The refunds would then reduce the balances owed for tax years 2008 and 2009. Finally, you mentioned submitting an Offer in Compromise or Installment Agreement for the remaining balances.

On October 1, 2010, the Office of Appeals sent you a contact letter scheduling a phone hearing for November 2, 2010. In the letter, we requested a financial statement, 433A with supporting documentation, for a collection alternative.

After the original date for the hearing was rescheduled, we held a phone hearing with your representative, Phillip Miller, on November 5, 2010. Mr. Miller argued the credits produced by the amended returns for tax years 2005 – 2007 would reduce the tax to zero for 2008. The taxpayer would still have a balance for 2009. Furthermore he indicated he had been in contact with the Service. The Service indicated the credits would not reduce the tax. Mr. Miller indicated the assessment statute had not expired for the periods so the credits should be available.

We advised Mr. Miller that the returns for 2006 and 2007 were received and the adjustments completed. We told Mr. Miller that there was a credit of $30,743.50 for 2006. With respect to tax year 2007, there is only an estimated tax penalty of $3,693.35.

Since there is no longer a balance for tax year 2006 due to the amended return, the estimated tax penalty for tax year 2007 will be abated per IRC 6654(e)(2). This IRC section allows an exception for the estimated tax penalty if the taxpayer;

- Had NO tax liability for the preceding taxable year, and
- Was a citizen or resident of the United States throughout the preceding tax year
- And the preceding taxable year was a 12 month year.

The exception is available for the taxpayer who originally filed a return with a balance

With respect to the return for tax year 2005, we told Mr. Miller there was no record the Service received an amended return. We requested a copy to forward for processing and any correspondence regarding the applicable credits from the Internal Revenue Service.

We did receive the 2005 amended return from Mr. Miller and sent the return for processing. Also, we received a power of attorney revocation from Mr. Miller. He indicated we should contact you directly.

On December 14, 2010, we sent a letter to you with a review of your account. In the letter, we advised you that the credit for 2006 of $30,743.50 couldn't be

utilized for any balances. The refund statute which is generally three years from the due of the return for prepaid credits had expired. Furthermore the refund statute had expired for 2005 as well. The amended returns were received more than three years from the return due date. We advised you to submit a financial statement for a collection alternative. We gave a deadline of December 28, 2010.

In response to the letter, you indicated you would submit amended returns for 2008 & 2009 but no collection alternative was received i.e. Offer in Compromise or Installment Agreement. Since no collection alternative was submitted, we closed your case.

For your information, the Notice of Federal Tax Lien (NFTL) is released when there is no longer a balance subject to the lien. In this case, the lien was filed for tax years 2005 – 2007. Although there is no longer a balance for 2006 and the estimated penalty abatement will eliminate the balance for 2007, there is still a balance for 2005. So the NFTL still remains

DISCUSSION AND ANALYSIS

a. Verification of legal and procedural requirements:

Appeals has obtained verification from the IRS office collecting the tax that the requirements of any applicable law, regulation or administrative procedure with respect to the proposed levy or NFTL filing have been met. Computer records indicate that the notice and demand, notice of intent to levy and/or notice of federal tax lien filing, and notice of a right to a Collection Due Process hearing were issued.

Assessments were properly made per IRC § 6201 for each tax and period listed on the CDP notice.

The notice and demand for payment letters were mailed to the taxpayer's last known address, within 60 days of the assessment, as required by IRC § 6303.

There were balances when the CDP levy notice was issued or when the NFTL filing was requested.

Prior involvement:

The Settlement Officer had no prior involvement with respect to the specific tax periods either in Appeals or Compliance

Collection statute verification:

The collection statute has not been suspended. The hearing request was not timely. The taxpayer requested and received an equivalent hearing. The collection statute is not suspended in equivalent hearings

Collection followed all legal and procedural requirements and the actions taken or proposed were appropriate under the circumstances.

Issues raised by the taxpayer

Collection Alternatives Offered by Taxpayer

You offered no alternatives to collection.

Challenges to the Existence of Amount of Liability

You disagreed with the liabilities because the cost basis for the stock options was not utilized on the returns. You subsequently filed amended returns which reduced or eliminated the tax for tax periods 2006 and 2007. The estimated penalty for 2007 was abated.

You raised no other issues:

Balancing of need for efficient collection with taxpayer concern that the collection action be no more intrusive than necessary.

We balanced the competing interests in finding the NFTL filing appropriate. You did not offer any collection alternatives during the CDP hearing process. As discussed above, adjustments were made to periods 2006 & 2007 based on your amended returns. However there is still a balance for 2005. Given your failure to propose any collection alternative and the balance for 2005, retaining the NFTL balances the need for efficient collection with your concern that any collection action be no more intrusive than necessary.

APPENDIX M

Form 668 (Z) (Rev. 10-2000)	1872 Department of the Treasury - Internal Revenue Service **Certificate or Release of Federal Tax Lien**	
Area: Serial Number SMALL BUSINESS/SELF EMPLOYED AREA #3 Lien Unit Phone: (800) 913-6050	Serial Number 562625909	For Use by Recording Office
I certify that the following-named taxpayer, under the requirements of section 6325 of the Internal Revenue Code has satisfied the taxes listed below and all statutory additions. Therefore, the lien provided by Code section 6321 for these taxes and additions has been released. The proper officer in the office where the notice of internal revenue tax lien was filed on July 10, 2009, is authorized to note the books to show the release of this lien for these taxes and additions.		

Name of Taxpayer LOUIS S & SANDRA SHUMAN		
Residence XXXX XXXXX XX CHEVY CHASE, MD 20815-4901 COURT RECORDING INFORMATION: Liber Page UCC No. Serial No. n/a n/a n/a 85595		

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assess-ment (f)
1040	12/31/2005		04/21/2008	05/21/2018	2872.07
1040	12/31/2006		09/22/2008	10/22/2018	115542.60
1040	12/31/2007		09/22/2008	10/22/2018	121892.08
*****	**********	******	**********	**********	********

Place of Filing	
CLERK OF THE CIRCUIT COURT MONTGOMERY COUNTY ROCKVILLE, MD 20850	240306.75
Total	

This notice was prepared and signed at BALTIMORE, MD , on this, the 04th day of May, 2011.	
Signature /s/ Gonzalez	Title Director, Campus Compliance Operations

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Certificate of Release of Federal Tax Lien Rev. Rul. 71-456, 1971 - 2 C.B. 409) Form 668(Z)(Rev. 10-2000)

Part 2 - Taxpayer's Copy

APPENDIX N

Department of the Treasury
Internal Revenue Service
Philadelphia, PA 19255-0025

For assistance call:
1-800-829-8374
Your Caller ID: 768542

Notice Number: CP49
Date: May 16, 2011

Taxpayer Identification Number:

Tax Form: 1040
Tax Year: December 31, 2007

LOUIS S SHUMAN
XXXX XXXXX XX
CHEVY CHASE MD 20815-4901

For account of: LOUIS S & SANDRA SHUMAN

Overpaid Tax Applied to Other Taxes You Owe

We applied $1,315.72 of the overpaid tax on your 2007 tax return to the unpaid balance of other federal taxes which our records show you owe.

You may still be due a refund if we applied only part of your overpayment to other taxes. You also may be due

a refund if you recently made a payment against the other taxes that we had not credited when we applied your overpayment. In either case, you will receive a check for any refund due to you as long as the amount is greater than one dollar. You must request a refund of less than one dollar. If you have any questions, please call us at the number listed above.

The figures below show our calculation:

How We Applied Your Overpayment

Amount of Overpaid Tax on Your Return	$1,285.00
Amount of Interest You Earned on Overpayment	$30.72
Total Amount Due You	$1,315.72
Total Amount Applied	$1,315.72
Amount to be refunded Unless You Owe Other Obligations	$.00

(Your refund may include interest. Please be aware that interest you receive on tax refunds is taxable income to you in the year you receive it. Please retain this notice for your records.)

Where We Applied Your Overpayment

Form(s)	Tax Period(s)	Amount(s) Applied
1040A	December 31, 2005	$406.39
1040	December 31, 2008	$909.33

We wanted to ensure that both you and your spouse receive this notice, so we've sent a copy to each of you. Each copy contains the same information related to your joint account.

B001490 CP:49

Tax Period: December 31, 2007

Philadelphia Service Center

CUT HERE
Return this voucher with your payment or correspondence.

Your Telephone Number:
( ) _____- _____

Best Time to Call:
_____AM_____PM

□ **Correspondence enclosed:**

• Write your Taxpayer Identification Number, tax period and tax form number on your inquiry or correspondence

SB 201118 19254-515-18111-1

49 Internal Revenue Service
Philadelphia, PA 19255-0025

LOUIS S SHUMAN
XXXX XXXXX XX
CHEVY CHASE MD 20815-4901

XXXXXXXXX JO SHUM 30 0 200712

APPENDIX O

IRS Department of the Treasury
Internal Revenue Service
Philadelphia, PA 19154-0030

Notice Number: CP 504
Notice Date: 09-20-2010

SSN/EIN:
Caller ID: 979441

71617618363237280586

LOUIS S SHUMAN
XXXX XXXXX XX
CHEVY CHASE MD 20815-4901

Urgent!!
We intend to levy on certain assets. Please respond NOW.
(To avoid additional penalty and interest, pay the amount you owe within ten days from the date of this notice.)

Our records indicate that you haven't paid the amount you owe. The law requires that you pay your tax at time you file your return. This is your notice, as required by Internal Revenue Code section 6331(d), of our intent to levy (take) any state tax returns that you may be entitled to if we don't receive your payment in full. In addition, we will begin to search for other assets we may levy. We can also file a Notice of Federal Tax Lien, If we haven't already done so. **To prevent**

collection action, please pay the current balance now. If you haven't already paid, can't pay, or have arranged for an installment agreement, it is important that you **call us immediately** at the telephone number shown below. Current balance may include Civil Penalty, if assessed.

Account Summary

Form: 1040A	Tax Period: 12/31/2005	For information on your penalty & interest computations, you may call 1-800-829-8374

Current Balance:	$463.63
Includes:	
Penalty:	$0.00
Interest:	$191.69
Last Payment:	$0.00

See the enclosed Publication 594, *The IRS Collection Process*, and Notice 1219B, *Notice of Potential Third Party Contact* for additional information

Questions? Call us at 1-800-829-8374

Please mail this part with your payment, payable to United States Treasury. Notice Number: CP 504
Notice: Date: 09-20-2010

write on your check:

1040A	12-31-2005		Amount Due: $463.63

Find information about filing and paying taxes at: www.irs.gov.

Enter Keyword: filing late (*or*) paying late

Internal Revenue Service
KANSAS CITY, MO 64999-0202

LOUIS S SHUMAN
XXXX XXXXX XX
CHEVY CHASE MD 20815-4901

XXXXXXXXX JO SHUM 30 0 200512 670 00000046363

Penalty and interest

About Your Notice - The penalty and interest charges on your account are explained below. If you want a more detailed explanation of your penalties and interest, please call the telephone number listed on the front of this notice. You may call your local IRS telephone number if the number shown on your notice is a long-distance call for you. All days mentioned in the paragraphs below or calendar days, unless specifically stated otherwise.

Penalty: $0.00

07 paying late

IRC section 6651 (a) (2)

We charged a penalty because you didn't pay your tax on time. Initially, the penalty is 1/2 % of the unpaid tax for each month or part of a month you didn't pay your tax.

If you disagree with this penalty, see "Removal of Penalties" in this notice.

Removal of Penalties

The law lets us remove or reduce penalties if you have reasonable cause or receive erroneous written advice from IRS.

Reasonable Cause

If you believe you have an acceptable reason why IRS should remove or reduce your penalties, send us a signed explanation. After we review your explanation,

we will notify you of our decision. In some cases, we may ask you to pay the tax in full before we remove or reduce the penalty for paying late.

Erroneous advice from IRS

We will remove your penalty if all of the following apply:

1. You asked IRS for advice on a specific issue,
2. You gave IRS complete and accurate information,
3. You received advice from IRS,
4. You relied on the advice of IRS gave you, and
5. You were penalized based on the advice IRS gave you.

To request removal of the penalty because of erroneous advice from IRS, you should do the following: (1) complete Form 843, *Claim for Refund and Request for Abatement*, and (2) send it to the IRS Service Center where you filed your return.

IRS Department of the Treasury
Internal Revenue Service
PHILADELPHIA, PA 19154-0030

Notice Number: CP504

7161 7618 3632 3728 0562

LOUIS S SHUMAN
XXXX XXXXX XX
CHEVY CHASE MD 20815-4901

For account of LOUIS S & SANDRA SHUMAN

We wanted to ensure that you and your spouse receive this notice, so we've sent a copy to each of you. Each copy contains the same information related to your joint account. Any amount you owe or balance due shown should be paid only once. We will issue any refund shown only once.

This notice contains two pre-addressed coupons for your convenience. Please detach the appropriate coupon and return to us in the envelope provided. Please refer to the information below to determine the correct address:

To send **correspondence** regarding this account with **NO** Payment	To send a **payment** or correspondence with a payment
Use the coupon addressed to:	Use the coupon addressed to:
Internal Revenue Service P.O. Box 16236 PHILADELPHIA, PA 19114-0236	Internal Revenue Service KANSAS CITY, MO 64999-0202 D

Cut and use this coupon if you are sending us correspondence only with NO payment enclosed.

(For payments, please use the other coupon attached to the notice.)

Please mail this part with your inquiry.

Notice Number: CP 504
Notice: Date: 09-20-2010

write on your check:

1040A	12-31-2005		Amount Due: $463.63

Internal Revenue Service
P.O. BOX 16236
PHILADELPHIA, PA 19114-0236

LOUIS S SHUMAN
XXXX XXXXX XX
CHEVY CHASE MD 20815-4901

XXXXXXXXX JO SHUM 30 0 200512 670 00000046363

APPENDIX P

Department of the Treasury
Internal Revenue Service
IRS Memphis Appeals Campus
PO Box 622, Stop 86-B
Memphis, TN 38101-0622

Date: JUN 06 2014

Person to contact:
Name: E J Frazier
Employee ID number: 0162502
Tel: 901-786-7588
Fax: 901-786-7501
Refer reply to:
AP:CO:MEC:EJF
Taxpayer ID number:

Tax period(s) ended:
12/2011

SANDRA SHUMAN
XXXX XXXXXX XX
CHEVY CHASE MD 20815-4901

In Re:
Collection Due Process Hearing
(Tax Court)

CERTIFIED MAIL 7011 3500 0000 7167 6051

NOTICE OF DETERMINATION
Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code

Dear Mrs. Sandra S Shuman:

We reviewed the completed or proposed collection actions for the tax period(s) shown above. This letter is your Notice of Determination, as required by law. We attached a summary of our determination below. The attached summary shows, in detail, the matters we considered at your Appeals hearing and our conclusions.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter. To obtain a petition form and the rules for filing a petition, write to:

Clerk, United States Tax Court
400 Second Street NW
Washington, DC 20217

You can also visit the Tax Court website at **www.ustaxcourt.gov.**

The United States Tax Court also has a simplified procedure for an appeal of a collection action if the total unpaid tax (including interest and penalties) for all periods doesn't exceed $50,000. You can obtain information about this simplified procedure by writing to the Tax Court or visiting their website as shown above.

The law limits the time for filing your petition to the 30-day period mentioned above. The courts cannot consider your case if you file late. If you file an appeal in an incorrect court (e.g., United States District Court you won't be able to refile in the United States Tax Court if the period for filing a petition expired.

If you don't petition the court within the period provided by law, we'll return your case to the originating IRS office for action consistent with the determination summarized below and described on the attached pages. If you have questions, please contact the person at the telephone number shown above.

Summary of Determination

The Notice of Intent to Levy was appropriate and is sustained in Appeals. Please see the attachment for further explanations.

Thank you for your cooperation.

Sincerely,

/s/Susan Wilks
Susan Wilks
Appeals Team Manager

Enclosure(s):
Attachment

cc: Phillip Miller

Attachment

LOUIS S & SANDRA SHUMAN

Type of Tax(es)	Tax Period(s)	Date of CDP Notice	Type of hearing	Date used to determine timeliness
Income	201112	10/01/2013	6330	10/31/2013

SUMMARY AND RECOMMENDATION

You filed a request for a Collection Due Process (CDP) hearing under Internal Revenue Code (IRC) § 6330 following receipt of a Notice of Intent to Levy and Notice of Your Right to a Hearing. The IRS Collection office issued the Notice of Intent to Levy on October 01, 2013 2013 via Certified Mail, Return Receipt Requested. Your Form 12153, Request for a Collection Due Process or Equivalent Hearing, was received on October 31, 2013 based on the timely postmark date. Your request was timely as it was made within the 30-day period for requesting a CDP hearing.

Appeals has verified that all applicable laws and procedures have been followed in your case. The Notice of Intent to Levy was appropriately issued. The proposed levy action is the appropriate action in this case.

BRIEF BACKGROUND

The CDP notice was for unpaid income tax liability for your 2011 Form 1040, U.S. Individual Income Tax Return. A review of the account transcript indicates that the self-assessed tax return was filed by you and reflected a balance due at the time of fifing.

Currently, the IRS has no record of receiving your 2012 Form 1040 income tax return.

On November 5, 2013, the Appeals office issued a letter offering you a face-to-face, telephonic, or correspondence hearing for tax periods 2008, 2009 and 2010. Since this case was assigned to the Settlement Officer on the same day as the hearing scheduled for tax periods 2008, 2009 and 2010, a second conference letter was not sent. The letter scheduled a telephonic hearing for December 2, 2013 at 1:00 pm Central Time. The letter requested proof of estimated tax paying compliance, proof of withholding compliance and proof of 2012 Form 1040 filing compliance. Since your Form 12153 did not propose a collection alternative, the letter requested your specific proposed installment agreement payment amount and payment date for consideration and the completed Form 433-A with supporting documentation attachments. Your complete response was requested by November 19, 2013. However, you did not provide the information requested by the deadline given.

The conference was held with your representative on December 4, 2013. The Settlement Officer advised the representative that the liability issue could not be raised in the hearing because the Statutory Notice of

Deficiency had been received. He informed the Settlement Officer that he had filed with Tax Court on that issue. The Service had denied the refund claims; therefore, there was no amount available to reduce the 2011 liability. We discussed how to file an 843 claim which was explained in the denial letters.

Additional information was received on 01/03/2014. The information was reviewed but it did not change the determination.

As of today, you have not provided proof of filing compliance, proof of paying compliance, or the financial data for any collection alternative. Therefore, the Appeals office is issuing the determination that the Notice of Intent to Levy was appropriately issued for the applicable tax period. The proposed levy action is sustained in full.

DISCUSSION AND ANALYSIS

a. Verification of legal and procedural requirements:

Appeals has obtained verification from the IRS office collecting the tax that the requirements of any applicable law, regulation or administrative procedure with respect to the proposed levy or NFTL filing have been met. Computer records indicate that the notice and demand, notice of intent to levy and/or notice of federal tax lien filing, and notice of a right to a Collection Due Process hearing were issued.

Assessment was properly made per IRC § 6201 for each tax and period listed on the CDP notice.

The notice and demand for payment letter was mailed to the taxpayer's last known address, within 60 days of the assessment, as required by IRC § 6303.

There was a balance due when the CDP levy notice was issued or when the NFTL filing was requested.

Prior involvement:

I had no prior involvement with respect to the specific tax periods either in Appeals or Compliance.

Collection statute verification:

The collection statute has been suspended; the collection period allowed by statute to collect these taxes has been suspended by the appropriate computer codes for the tax periods at issue.

Collection followed all legal and procedural requirements and the actions taken or proposed were appropriate under the circumstances.

Issues raised by the taxpayer

Collection Alternatives Offered by Taxpayer

You offered no alternatives to collection. The conference letter requested financial data and proof of compliance for consideration of a collection alternative; however, the information was never received.

Challenges to the Existence of Amount of Liability

You disagreed with your liability because you had not been allowed a claim for refund from a prior tax period. You filed amended returns which were denied. You also disagreed with how an audit was handled for this tax period. This issue could not be raised at the hearing because the tax has not been assessed and IRS records indicate you received the Statutory Notice of Deficiency. Your representative informed us and we confirmed that you have filed with Tax Court on that issue.

You raised no other issues:

Balancing of need for efficient collection with taxpayer concern that the collection action be no more intrusive than necessary.

Enforced collection is inevitably intrusive, but it does not appear that any less intrusive action will meet the liability. Since you did not present any acceptable alternatives, we believe this determination adequately balances your concerns against the need to efficiently collect the outstanding liability without being overly intrusive.

Form **1040X** (Rev. January 2010)

Department of the Treasury – Internal Revenue Service

Amended U.S. Individual Income Tax Return

▶ See separate instructions.

OMB No. 1545-0074

Your first name and middle initial	Your last name	Your social security number
Louis S.	Shuman	
If a joint return, your spouse's first name and middle initial	Your spouse's last name	Your spouse's social security number
Sandra	Shuman	
Your current home address (number and street). If you have a P.O. Box, see page 5 of the instructions. [redacted]	Apt. no.	Your phone number
Your city, town or post office, state, and ZIP code. If you have a foreign address, see page 6 of instructions. Chevy Chase, Maryland 20815		

All filers must complete lines A, B, and C.

A Amended return filing status. You must check one box even if you are not changing your filing status. *Caution. You cannot change your filing status from joint to separate returns after the due date.*

☐ Single ☒ Married filing jointly ☐ Married filing separately
☐ Qualifying widow(er) ☐ Head of household (If the qualifying person is a child but not your dependent, see page 5 of instructions.)

B This return is for calendar year ☐ 2009 ☐ 2008 ☐ 2007 ☒ 2006
Other year. Enter one: calendar year or fiscal year (month and year ended):

C Explanation of changes. In the space provided below, tell us why you are filing Form 1040X.

Payments properly applied to 2006, are detailed and explained in Atch A-01, and Attachments 01-27 included there. Correction of taxpayer's 2006 return filed on 8/8/08 (Atch 07), as amended by Form 1040X for 2006 filed on 7/23/10 (Atch 07). IRC 6020(b); IRC 6402; 26 CFR 301.6402-3(a)(5); IRC 6511; Western v. U.S. 223 F.3d 1024 (Fed. Cir. 2003). Parker Hanifin v. U.S. (U.S. Court Federal Claims. 2006). These corrections arise from taxpayer(s) stock option income being taxed, without deduction for stock option cost basis.

Income and Deductions		Correct Amount
1 Adjusted gross income (see page 6 of instructions). If net operating loss (NOL) carryback is included, check here ☐	1	695,799
2 Itemized deductions or standard deduction (see page 6 of instructions)	2	124,254
3 Subtract line 2 from line 1	3	571,545
4 Exemptions. If changing, complete the Exemptions section on the back and enter the amount from line 30 (see page 6 of instructions)	4	4,400
5 Taxable income. Subtract line 4 from line 3	5	567,145
Tax Liability		
6 Tax (see page 7 of instructions). Enter method used to figure tax: Schedule Y-1	6	172,351
7 Credits (see page 8 of instructions). If general business credit carryback is included, check here ☐	7	
8 Subtract line 7 from line 6. If the result is zero or less, enter -0-	8	172,351
9 Other taxes (see page 8 of instructions)	9	
10 Total tax. Add lines 8 and 9	10	172,351
Payments		
11 Federal income tax withheld and excess social security and tier 1 RRTA tax withheld (if changing, see page 8 of instructions)	11	202,281
12 Estimated tax payments, including amount applied from prior year's return (see page 8 of instructions)	12	641,345
13 Earned income credit (EIC) (see page 8 of instructions)	13	
14 Refundable credits from ☐ Schedule M or Form(s) ☐ 2439 ☐ 4136 ☐ 5405 ☐ 8801 ☐ 8812 ☐ 8863 ☐ 8885 or ☐ other (specify):	14	
15 Total amount paid with request for extension of time to file, tax paid with original return, and additional tax paid after return was filed (see page 9 of instructions)	15	
16 Total payments. Add lines 11 through 15	16	843,626
Refund or Amount You Owe *(Note. Allow 8–12 weeks to process Form 1040X.)*		
17 Overpayment, if any, as shown on original return or as previously adjusted by the IRS (see page 9 of instructions)	17	
18 Subtract line 17 from line 16 (if less than zero, see page 9 of instructions)	18	843,626
19 Amount you owe. If line 10 is more than line 18, enter the difference (see page 9 of instructions)	19	
20 If line 10 is less than line 18, enter the difference. This is the amount overpaid on this return	20	671,275
21 Amount of line 20 you want refunded to you	21	
22 Amount of line 20 you want applied to your (enter year): 2007 estimated tax	22	671,275

Complete and sign this form on Page 2.

Exemptions

Complete this part only if you are:

- increasing or decreasing the number of exemptions (personal and dependents) claimed on line 6d of the return you *are* amending, or
- increasing or decreasing the exemption amount for housing individuals displaced by Hurricane Katrina or a Midwestern disaster.

See Form 1040 or Form 1040A instructions and page 10 of Form 1040X instructions.

			Correct Number or Amount
23	*Yourself and spouse. Caution. If someone can claim you as a dependent, you cannot claim an exemption for yourself*	23	
24	Your dependent children who lived with you	24	
25	Your dependent children who did not live with you due to divorce or separation	25	
26	Other dependents	26	
27	Total number of exemptions. Add lines 23 through 26	27	
28	Multiply the number of exemptions claimed on line 27 by the exemption amount shown in the instructions for line 28 for the year you are amending (see page 10 of instructions)	28	
29	If you are claiming an exemption amount for housing individuals displaced by Hurricane Katrina, enter the amount from Form 8914, line 6 for 2006. If you are claiming an exemption amount for housing individuals displaced by a Midwestern disaster, enter the amount from Form 8914, line 2 for 2008, or line 6 for 2009	29	
30	Add lines 28 and 29. Enter the result here and on line 4 on page 1 of this form	30	

31 List ALL dependents (children and others) claimed on this amended return. If more than 4 dependents, see page 10 instructions.

(a) First name	Last name	(b) Dependent's social security number	(c) Dependent's relationship to you	(d) Check box if qualifying child for child tax credit (see page 10 of instructions)
				☐
				☐
				☐
				☐

Presidential Election Campaign Fund

Checking below will not increase your tax or reduce your refund.

☐ Check here if you did not previously want $3 to go to the fund, but now do.

☐ Check here if this is a joint return and your spouse did not previously want $3 to go to the fund, but now does.

Checklist

Before mailing this form, remember to

☐ Complete name, address, and social security number
☐ Complete lines A, B, and C on page 1
☐ Complete lines 1 through 22 on page 1
☐ Complete lines 23 through 31 on page 2, if required
☐ Attach any supporting documents and new or changed forms and schedules
☐ Sign and date this form

Sign Here

Remember to keep a copy of this form for your records.

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information about which the preparer has any knowledge.

▶ _____ 4/16/12 ▶ _____ 4/16/12

Your signature Date Spouse's signature. If a joint return, both must sign. Date

Paid Preparer's Use Only

▶ _____ _____ _____

Preparer's signature Date

Firm's name (or yours if self-employed), address, and ZIP code

☐ Check if self-employed

_____ _____ _____

Preparer's SSN or PTIN Phone number EIN

For forms and publications, visit IRS on the Web at www.irs.gov. Form 1040X (Rev. 01-2010)

ATCH 001-2006

To:

1. Dept. of the Treasury
   Internal Revenue Service
   Kansas City, MO 64999-0002

2. Dept. of the Treasury
   Internal Revenue Service
   Philadelphia, PA 19255-0525 (2010)

From:

Louis & Sandra Shuman
XXXX XXXXXX XX
Chevy Chase, Md 20815

Date: April 16, 2012

Taxpayer(s) Louis & Sandra Shuman ("taxpayer") submit this letter in support of the following:

1.1) Amended and corrected federal income tax returns and refund claims as follows:

a) for tax year 2005, as corrected by Form 1040X (Atch 001-2005);
b) for tax year 2006, as corrected by Form 1040X (Atch 001-2006);
c) for tax year 2007, as corrected by Form 1040X (Atch 001-2007);
d) for tax year 2008, as corrected by Form 1040X (Atch 001-2008);
e) for tax year 2009, as corrected by Form 1040X (Atch 001-2009);
f) for tax year 2010, as corrected by Form 1040X (Atch 001-2010); this return was previously filed with IRS without signature, in error.

1.2) This letter is included, and incorporated by reference, in each of the amended returns/refund claims for the following tax years: 2005; 2006; 2007; 2008; 2009; and, 2010. This letter is identified as Atch A-01 for each of the above returns: 2005-2010.

1.3) This Letter (Atch A-1), and its supporting attachments is the same for each amended return/refund claim for 2005-2010. Each amended return/refund claim for 2005-2010 directly impacts the other amended returns/refund claims for 2005-2010. Accordingly, these amended returns/refund claims are filed together, with Form 1040X for each year filed in chronological order, and this Letter (Atch A-01) filed immediately thereafter, along with its Attachments.

1. Background:

1.1 Tax Years 2005-2007

IRS filed a tax lien against taxpayer dated 7/3/09, based on IRS demand for unpaid income taxes for the years 2005-2007, at that time amounting to: $240,306.75. (Atch 01).

IRS thereafter levied on taxpayer's bank accounts (Atch 02) and collected the following amounts: $2,531.99 (Atch 03); $153.50 (Atch 04); and $74.14. (Atch 05). Total amount levied on taxpayer's bank accounts: $2,759.63.

On 7/23/10, taxpayer filed amended returns for 2005 (Atch 06); 2006 (Atch 07); and 2007 (Atch 08). These amended returns for 2005-2007 made claims for refund based on overpayments of income tax for each of these years.

By Letter dated 9/20/10 (Atch 08A), IRS sent taxpayer a notice of intent to levy for an unpaid income tax balance of $463.63 for 2005 based on Form 1040A. Form 1040A (Atch 13) was an IRS substitute income tax return, filed on 9/3/07 ("T-IRS-1040A-2005") for 2005, because taxpayer's return for 2005 was not filed on time. IRC 6020(b) treats T-IRS-1040A-2005 as legal on its face for all lawful purposes. T-IRS-1040A-2005 was therefore a valid taxpayer return for all lawful purposes.

Taxpayer requested a hearing before the IRS Appeals Field Office ("IRS Appeals"), and taxpayer was allowed an equivalent due process hearing. By decision dated 4/21/11, the Appeals Field Office decided that there was no tax due for 2006 and 2007, but there was a small amount of tax due for 2005. (Atch 09).

While taxpayer's case was pending before IRS Appeals, IRS notified taxpayer on 2/17/11, that taxpayer's matters were being referred to IRS in Holtsville, N.Y. (Atch 10)

Then, by IRS Letter dated 5/16/11, IRS decided that taxpayer's 2007 return reflected an overpayment of $1,315.72 which was applied in part ($406.39) to eliminate any tax due for 2005, and $909.33 was applied to tax year 2008. (Atch 11). This letter also stated taxpayer may still be due a refund if IRS only applied part of taxpayer's overpayment to other taxes.

The IRS tax lien was released by Certificate of Release of Tax Lien, 5/4/11 ("Certificate"). (Atch 12). This Certificate, along with IRS Letter dated May

5/16/11 (Atch 11) confirms that taxpayer's income tax liabilities for 2007-2009 have been satisfied in full.

The sole basis for IRS Appeal's denial of taxpayer's refund claims for 2005-2007, is that the refund claims were untimely, since the refund claims were not filed within 3 years of the due date for the returns (Atch 09).

In this case, tax payer's refund claims were timely because the refund claims were filed within three years of filing their returns, which were filed late. It is IRS's formal position that a taxpayer has 3 years, from the date of filing the tax return, to file a refund claim, even if the return was filed untimely. Rev. Rul. 76-511, 1976-2 CB 428. Weisbart v. U.S. 222 F.3d 93 (2nd Cir., 2000). Taxpayer respectfully requests that the refund claims for 2005-2007, and as applicable to 2008-2010, be reconsidered and adjusted, credited and/or abated on the basis that the refund claims were timely, based on IRS's own rules.

1.2 Tax Years 2008-2009

Taxpayer's 2008 return (Atch 20), and 2009 return (Atch 21) was filed on 7/23/10. Taxpayer's Form 1040X amended return for 2008, dated and filed 4/16/12, is included here and identified as Atch 001-2008. Taxpayers Form 1040X amended return for 2009, dated and filed 4/16/12, is included here and identified as Atch 001-2009.

On 9/6/10, IRS sent taxpayer a notice to pay $53,718.54 for 2008 (Atch 22). On 9/6/10, IRS sent taxpayer a notice to pay $52,575.47 for 2009 (Atch 23). On 10/11/10, IRS sent taxpayer notice of intent to levy $54,118.64 for 2008 (Atch 24). On 10/11/10, IRS sent

taxpayer of notice of intent to levy $53,024.48 for 2009 (Atch 25). On 2/17/11, IRS notified taxpayer that taxpayer's matters were being referred to IRS in Holtsville, N.Y. (Atch 10).

Taxpayer's amended return for 2008 (Atch 001-2008) reflects an overpayment of $667,707, as detailed in this letter, and the supporting Attachments. Taxpayer's amended return for 2009 (Atch 001-2009) reflects an overpayment of $618,403, as detailed in this letter, and the supporting Attachments. Taxpayer respectfully requests that these refund claims for 2008 and 2009, be considered and adjusted, credited and/or abated, based on the refund claims for 2005-2007, and the explanations set out in this letter, and the supporting documents.

1.3 Tax Year 2010

Taxpayer's 2010 return (Atch 26), was filed on 10/13/11 (Atch 26). This return was not signed by taxpayer. Taxpayers Form 1040X amended return for 2010, dated and filed 4/16/12, is included here and identified as Atch 001-2010, and amends and corrects the return filed on 10/13/11.

On 12/26/11, IRS sent taxpayer a notice of intent to levy $56,556.56 for 2010 (Atch 27). Taxpayer then requested an IRS Appeal due process hearing, and stated that taxpayer would by filing an amended and corrected return. Taxpayer was unable to file the amended return before this date because of serious personal, family medical issues.

Taxpayer's now filed amended return for 2010 (Atch 001-2010) reflects an overpayment of $587,487, as

detailed in this letter, and the supporting Attachments. Taxpayer respectfully requests that this refund claim for 2010 be considered and adjusted, credited and/or abated, based on the refund claims for 2005-2007, and 2008-2009, and the explanations set out in this letter, and the supporting documents.

2. Stay or Enforcement

There is no tax due for 2005-2007, so there is no basis for enforcement action for 2005-2007. Taxpayer's refund claims for 2005-2007, when credited and/or abated to 2008-2010 properly satisfy any taxes due for 2008-2010.

The sole issue is the timeliness of the refund claims for 2005-2007 which taxpayer claims have not been properly applied to 2005-2010. Taxpayer claims timeliness based on IRS's own settled rules. For these reasons, taxpayer respectfully requests stay of enforcement action, for 2008-2010, while these refund claims are pending before IRS. Additionally, to protect taxpayer's rights here, taxpayer also requests and proposes an instalment agreement, and a hearing before IRS Appeals, while IRS reviews taxpayer's amended returns and refund claims presented in this letter, along with the supporting Attachments included here.

3.Claims For Refund

Taxpayer's refund claims arise from the fact that, beginning in tax year 2003, taxpayer began to receive stock options, as an additional form of compensation. But, on the returns for 2003-2008, which were prepared by tax professionals, taxpayer's income from stock

options were not reduced by taxpayer's basis (cost). The failure to reduce stock option income by stock option cost basis, resulted in large overpayments of income tax, based on income taxpayer never actually received.

The following calculates the refund claims for 2005-2010, as follows:

3.1) Refund Claim for Tax Year; 2005

A. Timeliness of Refund Claim:

On 9/3/07, IRS filed a substitute income tax return for 2005 (T-IRS-1040A-2005), because taxpayer's return for 2005 was not filed on time. IRC 6020(b) treats T-IRS-1040A-2005 as legal on its face for all lawful purposes. T-IRS-1040A-2005 was therefore a valid taxpayer return. (Atch 13).

On 8/8/08, taxpayer's 2005 prepared return (T-1040-2005) was filed. (Atch 06; Atch 13). Whether classified as an original return, or as an amended return, T-1040-2005 was treated as an amended return by IRS. (Atch 13). T-1040-2005 met the definition of a refund claim, since it reflected an overpayment of income tax on the return. 26 CFR 301.6402-3(a)(5). As an amended return T-1040.2005 is deemed to relate back to the original T-IRS 1040A-2005, which was filed on 9/3/07, so that T-1040-2005 is also deemed to have been filed on 9/3/07. Western v. U.S. 323 F.3d 1024 (Fed. Cir. 2003).

IRS's filing of the substitute return T-IRS-1040A-2005, tolled the time for assessment of tax, and IRS has acquiesced in the position that when cases are open for IRS to make corrective assessments on a return, the taxpayer is entitled to amend the return within the

same time frame. Western v. U.S. 323 F.3d 1024 (Fed. Cir. 2003).

On 7/ 23/10 taxpayer filed a second amended return (T-AR-2005) (Atch 06; Atch 13). IRS treats an amended return as merely perfecting the original refund claim, and relates back to the original refund claim, and is timely if the original refund claim was timely. Western v. U.S. 323 F.3d 1024 (Federal Circuit, 2003). Since (T-AR-2005), relates back to T-1040-2005, and T-IRS-1040A-2005, T-AR-2005 and T-1040-2005 are both treated as filed on 9/3/07.

Since taxpayer is entitled to have the 2005 refund claims (T-1040-2005; and T-AR-2005) relate back to 9/3/07, then 9/3/07 is the proper date for the filing of the 2005 refund claims. Even if 9/3/07 were not treated as the filing date for taxpayer's 2005 refund claims (original and/or amended), T-1040-2005 was filed on 8/8/08, and so the 2005 refund filing date would not be NLT 8/8/08.

Although the timeliness of a refund claim is generally dependent on the due date for the return, as stated by IRS Appeals (Atch 09), there are exceptions to that rule. One exception to that rule is when the taxpayer's return is filed late, as the case here. When the return is filed late, the deadline for filing a refund claim begins to run from the time the late return was filed. Rev. Rul. 76-511 1976-2 CB 428; Weisbart v U.S. 222 F.3d 93 (2nd Cir., 2000).

Since taxpayer's date of filing its claims for refund for 2005, was 9/3/07, (but NLT 8/8/08) taxpayer's refund claim for 2005 was timely. Since taxpayer's

refund claim for 2005 was timely, the amount of the refund is allowed to the extent that it covers overpayments made within three (3) years of filing the refund claim, or within two (2) years of payment of the tax, whichever is later. IRC 6511(a).

B. Calculation of Amount of Refund Claim:

The following payments are subject to an allowance for abatement/refund and/or credited since made within 3 years of 9/3/07 (but NL T 8/8/08): (a) $75,610, for amounts withheld in 2005, and which are deemed paid on October 15, 2006, since taxpayer obtained an extension to file 2005 returns to 10/15/06 (Atch 06). IRC 6513; and (b) $4,782 paid on 8/8/08 (Atch 13).

1. Based on the above payments, since the actual tax due for 2005 was $49,156, taxpayer over paid IRS in the amount of: $31,236. (Atch 06).

Taxpayer is required to submit an additional Form 1040X, to include the above overpayments which were not included in its amended refund claim filed on 7/23/10 (Atch 06). Taxpayer's additional Form 1040X, is included here as ATCH 001-2005.

In correcting its refund claim for 2005, taxpayer and IRS records reflect the following payments, which taxpayer is also entitled to include in its refund claim for 2005:

2. $2,606.13 paid by levy on 7/6/10. (Atch 13).

Taxpayer is also entitled to correct its refund claim for 2005 to include the following payments in its refund claim for 2005:

3. $23,919.10 paid by tax payer check #1647 on 12/8/05 which was incorrectly applied to taxpayer's 2003 return (Atch 14). In 2003, taxpayer included into income from stock options the sum of $412,060.14, without deducting the cost basis of the stock options in the amount of $425,841.82. This resulted in an overpayment of tax in the amount of $145.253.49, since taxpayer paid $180,946 in taxes when the correct tax was $35,692.51. The recalculation of taxpayer's 2003 tax liability and overpayment is described in Atch 15, taxpayer's adjustment to gross income, based on accounting for taxpayer basis in exercised stock options. The proof supporting this recalculation is taxpayer's 2003 return dated 7/22/05, and W-2 for 2003. (Atch 16). This refund claim for the payment of $23,919.10, made on 12/8/05, is timely since made within 3 years of 9/3/07, but NLT 8/8/08.

4. $264,894.38 paid by taxpayer check #1646 on 12/8/05 which was incorrectly applied to taxpayer's 2004 return (Atch 17). In 2004, taxpayer included into income from stock options the sum of $933,134.72, without deducting the cost basis of the stock options in the amount of $947,159.72. This resulted in an overpayment of tax in the amount of $398,562.30, since taxpayer paid $167,750.28 in taxes when the correct tax was $27,995.08. The recalculation of taxpayer's 2004 tax liability and overpayment is described in Atch 18, taxpayer's adjustment to gross income, based on accounting for taxpayer basis in exercised stock options. The proof supporting this recalculation is taxpayer's return for 2004, dated 7/25/05 and W-2 for 2004 (Atch 19), This refund claim for the payment of

$264,894.38, made on 12/8/05, is timely since made within 3 years of 9/3/07, but NLT 8/8/08.

Taxpayer is also entitled to correct its refund claim for 2005 to include the following payments in its refund claim for 2005:

5. $157,027 representing overpayment of tax for 2003 (Atch 15; Atch 16). Since this overpayment is based on withholding payments for 2003, these payments are deemed paid on 4/15/04, the due date for the 2003 return (Atch 16). IRC 6513. Since this date is beyond the 3 year deadline for refund claims, taxpayer is not permitted to apply this payment to the 2005 refund claim on this basis.

Instead, taxpayer relies on the following basis for applying $157,027 to the 2005 refund claim. Taxpayer has the right to elect, and elects, to apply the 2003 overpayment to the next year-2004, as payment of estimated taxes for 2004. IRC 6513(d). Taxpayer exercises this right of election, and by exercising this right of election, taxpayer's payment of $157,027 is deemed paid on the due date of the 2004 return, which is 4/15/05. By exercising this right of election, this payment is within the deadline for refund claims for 2005.This refund claim for the payment of $157,027, made on 4/15/05, is timely since made within 3 years of 9/3/07.

6. $161,663 representing overpayment of tax for 2004 (Atch 18). Since this overpayment is based on withholding payments for 2004, these payments are deemed paid on 4/15/05, the due date for the 2004 return. IRC 6513. (Atch 19). Since this date is within

the 3 year deadline for refund claims, taxpayer(s) are permitted to apply this payment to the 2005 refund claim on this basis. This refund claim is timely since made within 3 years of 9/3/07.

Additionally, taxpayer is entitled to rely on the following basis for applying $161,663 to the 2005 refund claim: taxpayer has the right to elect to apply the 2004 overpayment to the next year-2005, as payment of estimated taxes for 2005. IRC 6513(d). By exercising this right of election, taxpayer's payment of $161,663 is deemed paid on the due date of the 2005 return. which is 10/15/06. By exercising this right of election, this payment is also within the deadline for refund claims for 2005. Taxpayer exercises this right of election. IRC 6513(d). The proof supporting this recalculation is taxpayer's return for 2004, dated 7/25/05 and W-2 for 2004 (Atch 19). This refund claim for the payment of $161,663, made on 10/15/06, is timely since made within 3 years of 9/3/07, but NLT 8/8/08.

C. Summary: 2005; Refund Claim Amount:

Refund Claim Amount: 2005						
#	amount-overpayment	payment date	proof of payment	source of overpayment	refund claim date	proof of refund claim date
1	4,782	08-08-08	Atch 13 Atch 20	taxpayer payment with filed return	09-03-07 but nlt 8-8/08	001-2005 Atch 06; Atch 13; Atch 20

2	2,606.13	07-06-10	Atch 13	irs levy	09-03-07 but nlt 8-8/08	001-2005 Atch 06; Atch 13; Atch 20
3	23,919.10	12-08-05	Atch 14 Atch 15 Atch 16	taxpayer check	09-03-07 but nlt 8-8/08	001-2005 Atch 06; Atch 13; Atch 20
4	264,894.38	12-08-05	Atch 17 Atch 18 Atch 19 Atch 20	taxpayer check	09-03-07 but nlt 8-8/08	001-2005 Atch 06; Atch 13; Atch 20
5	157,027	04-15-05	Atch 15 Atch 16 Atch 21	withholding for 2003	09-03-07	001-2005 Atch 06; Atch 13; Atch 20
6	161,663	10-15-06	Atch 18 Atch 19 Atch 22	withholding for 2004	09-03-07 but nlt 8-8/08	001-2005 Atch 06; Atch 13; Atch 20
7	641,345.61	total				
X	X	X	X	X	X	X
	payment type					
	estimated tax payment-amounts applied from prior year's returns		date	amount	payment method	
8			04-15-05	157,027	withholding	

9			12-08-05	23,919.10	check	
10			12-08-05	264,894.38	check	
11			10-15-06	161,663	withholding	
12		total		607,503.48		
X	X	X	X	X	X	X
	amounts paid with return and/or after return		date	amount	payment method	
13			08-08-08	4,782	check with return	
14			07-06-10	2,606.13	irs levy	
15		total		7,388.13		
X	X	X	X	X	X	X

4. Crediting Overpayments to 2005 and Subsequent Years

4.1) Refund Claim for Tax Year: 2005

The sole basis for denying taxpayer's refund claims for 2005-2007, as stated by IRS Appeals decision of April 21, 2011, was that the " ... refund statute which is generally three years from the due [date] of the return ... had expired." (Atch 09). Despite this finding by IRS Appeals, IRS issued a Certificate of Release of Federal Tax Lien, dated May 04, 2011, stating that an income taxes, and statutory additions for 2005-2007 have been satisfied (Atch 12). Then, IRS, by Letter dated 5/16/11, applied a 2007 amended return overpayment/refund claim (Atch 08), to eliminate any tax due for 2005

arising from IRS 1040A, the IRS 2005 substituted return filed on 9/3/07; and to apply $909.33 from the 2007 overpayment/refund claim to 2008 tax liabilities.

Since taxpayer(s) filed their 2005-2007 returns late, the due date or returns for 2005-2007 do not apply to commence the refund deadlines, as set forth above at Pages 1-3. The applicable rule here is: the date the late returns were filed, is the date that commences the 3 year limitation period. Rev. Rul. 76-511 1976-2 CB 428; Weisbart v. U.S. 222 F.3d 93 (2nd Cir., 2000). IRS acquiesced to this decision, on Nov. 13, 2000. Here IRS filed T-IRS-1040A-2005 on 9/3/07, and since later amended returns, which corrected T-IRS-1040A-2--5, relate back to T-IRS-1040A-2005, all amendments to T-IRS-1040A-200S, are deemed filed on 9/3/07.

IRS Appeals also stated that it forwarded taxpayer(s) 2005 return (T-1040-2005) (amended returns for processing (Atch 09). IRS letter of 5/16/11, reflects clearance of any hold arising from charges attributable to IRS 1040A (T-IRS-1040A-2005). For all the foregoing reasons presented in this letter, since the governing IRS rules for fixing the deadline for filing refund claims, for this case in which returns were filed late, were not followed, taxpayer requests review and reconsideration of taxpayer's pending refund claims, as amended.

4.2) Refund Claim for Tax Year: 2006

Enclosed is taxpayer's Form 1040X amended return/refund claim for 2006. (Atch 001-2006).For the reasons set forth at Pages 1-3 above, taxpayer(s) refund

claim for 2006 is timely and amends and corrects the previously filed refund claim for 2006.

For the reasons set forth at Pages 3-9 here, the amount of taxpayer's refund claim for 2006 is timely, as set forth in taxpayer's Form 1040X for 2006, amending and correcting the previously filed refund claim for 2006. (Atch 001-2006).

4.3) Refund Claim for Tax Year: 2007

Enclosed is taxpayer's Form 1040X amended return/refund claim for 2007. (Atch 001-2007). For the reasons set forth at Pages 1-3 above, taxpayer's refund claim for 2007 is timely and amends and corrects the previously filed refund claim for 2007.

For the reasons set forth at Pages 3-9 here, the amount of taxpayer's refund claim for 2007 is timely, as set forth in taxpayer's Form 1040X for 2007, amending and correcting the previously filed refund claim for 2006. (Atch 001-2007).

4.4) Refund Claim for Tax Year: 2008

Enclosed is taxpayer's Form 1040X amended return/refund claim for 2008. (Atch 001-2008). For the reasons set forth at Pages 1-3 above, taxpayer(s)refund claim for 2008 is timely and amends and corrects the previously filed original return for 2008.

For the reasons set forth at Pages 3-9 here, the amount of taxpayer's refund claim for 2008 is timely, as set forth in taxpayer's Form 1040X for 2008, amending and correcting the previously filed original return for 2008. (Atch 001-2008).

4.5) Refund Claim for Tax Year: 2009

Enclosed is taxpayer's Form 1040X amended return/refund claim for 2009. (Atch 001-2009). For the reasons set forth at Pages 1-3 above, taxpayer(s) refund claim for 2008 is timely and amends and corrects the previously original return for 2009.

For the reasons set forth at Pages 3-9 here, the amount of taxpayer's refund claim for 2009 is timely, as set forth in taxpayer's Form 1040X for 2009. amending and correcting the previously filed original return for 2009. (Atch 001-2009).

4.6) Refund Claim for Tax Year: 2010

Enclosed is taxpayer's Form 1040X amended return/refund claim for 2010. (Atch 001-2010). For the reasons set forth at Pages 1-3 above, taxpayer's refund claim for 2009 is timely and amends and corrects the previously filed original return for 2010.

For the reasons set forth at Pages 3-9 here, the amount of taxpayer(s) refund claim for 2010 is timely, as set forth in taxpayer(s) Form 1040X for 2010, amending and correcting the previously filed original return for 2010. (Atch 001-2010).

5. Claim For Business Loss under IRC 165

Taxpayer, as an employee, and as an independent contractor, is engaged in a trade or business. Folker v. Johnson 230 F2d 906 (2nd Cir., 1956). In 2010, taxpayer became aware, for the first time, of the substantial losses incurred because tax professionals, that prepared taxpayer's returns, did not reduce stock option income by stock option basis.

Under IRC 165(a) a business deduction is allowed for bona fide losses sustained in the year and not compensated for. The loss must be evidenced by a closed and completed transaction and fixed by identifiable events. IRS reg. 1.165-1(b) Taxpayer's amended returns for 2005-2007 (Atch 06; Atch 07; and Atch 08) show that for the first time taxpayer became aware that stock basis had not been deducted from stock income.

The losses incurred are calculated as follows:

1. $641,345, as set out in Atch 06, and Atch 001-2005;
2. Increased overpayments of state-local taxes approximated at: $60,750;
3. Forced sale of taxpayers Potomac, Md home, with resulting closing costs approximating: $20,000; and loss of equity in home approximating: $400,000.
4. Subsequent purchase of home, with closing costs approximating: $20,000.
5. Purchase of home, approximately ½ the value of the Potomac MD home, with no equity, and increased mortgage; difference in cost of Potomac mortgage payments and Chevy Chase payments (2006-2010), approximating: $225,000.
6. Total loss: $967,095.

Taxpayer has no coverage for this loss, by compensation, or otherwise. If taxpayer were to make a claim, it would be in the nature of professional malpractice, and/or negligence. Taxpayer has abandoned any such claims, because, in addition to the

time end expense of suing, taxpayer would be required to sue several attorney, and accountant, firms including persons with very close relationships to immediate family members. The destructive effect of such actions would only further damage, if not irreparably damage, already damaged family relationships.

It is noted that IRS has now imposed the requirement that information returns must now include stock basis, as well as stock income. Enforcement of these new requirements should help to prevent the kind of devastating consequences to taxpayers, as in fact happened to taxpayer here, which included substantial financial damage, loss of home through forced sale, imminent loss of home through IRS seizure, and loss and destruction of taxpayer business. Under IRC 172, taxpayer may go back 2 years, and forward 20 years. Taxpayer claims this loss deduction for 2010, to the extent that it does not conflict, and create a double deduction, with respect to the refund claims for 2005-2010 made here.

6. List of Attachments

List of Attachments:		
#	Atch #	Description
1	001-2005	1040x-2005 amended return 4/16/12
2	001-2006	1040x-2006 amended Return 4/16/12
3	001-2007	1040x-2007 amended return 4/16/12

4	001-2008	1040x-2008 amended return 4/16/12
5	001-2009	1040x-2009 amended return 4/16/12
6	001-2010	1040x-2010 amended return 4/16/12
7	A-01	L. Shuman letter 4/16/12
8	01	7/3/09 Tax Lien
9	02	5/1/09 notice of levy
10	03	6/7/ 10 levy on bank account for 2,531.99
11	04	5/4/09 levy on bank account for 113.90 for 39.60
12	05	6/7/10 levy on bank account for 58.69 for 15.45
13	06	Taxpayer Form 1040x amended return for 2005 filed 7/23/10, w/original 2005 return attached dated 8/6/08
14	07	Taxpayer form 1040x amended return for 2006 filed 7/23/10, w/original 2006 return attached dated 8/6/08
15	08	Taxpayer For, 1040x amended return for 2007 filed 7/23/10, w/original 2007 return attached dated 8/15/08

16	08A	9/20/10 IRS notice intent to levy attributable to Form 1040A for: 463.63 owed (T-IRS-1040A-2005)
17	09	4/21/11 IRS Appeals decision re IRS tax lien for 2005-07
18	10	2/17/11 IRS Ltr referring case to IRS Holtsville NY
19	11	5/1611 IRS Ltr applying overpayment from 2007 to 2005, and 2008
20	12	5/4/11 Certificate of Release: tax lien
21	13	IRS Account Transcript: 1040A for 2005 1040 for 2006 1040 for 2007
22	14	ck1647 dated 12/8/05 for $23,919.10 to IRS incorrectly for 2003 tax
23	15	4-16-12-recalculation-adjusted gross income-2003-overpayment: $145,253.49
24	16	2003 return dated 7/25/05: and 2003-W2
25	17	ck1646 dated 12/8/05 for $264,894.38 to IRS incorrectly for 2004 tax
26	18	4-16-12-recalculation-adjusted gross income-2004-overpayment: $398,562.30

27	19	2004 return dated 7/25/05; and 2004-W2
28	20	2008 original return filed 7/23/10
29	21	2009 original return filed 7/23/10
30	22	9/6/10 IRS notice to pay-2008-$53,718.54
31	23	9/6/10 IRS notice to pay-2009-$52,575.47
32	24	10/11/10 IRS notice intent to levy-2008-$54,118.64
33	25	10/11/10 IRS notice intent to levy-2009-$53,024.48
34	26	2010 original return filed 10/13/11
35	27	12/26/11 IRS notice intent to levy-2010-$56,556.56
X	X	X

The foregoing is taxpayer's claim for refund for 2005-2010, and taxpayer's claim for IRC 165 loss, for the year 2010. This letter and attachments is incorporated by reference into the refund claims for 2005-2010-, and the loss deduction claim for 2010.

Respectfully,

/s/Louis Shuman
Louis Shuman: for Louis & Sandra Shuman

APPENDIX R

26 U.S.C. § 6214. Determinations by Tax Court

(a) Jurisdiction as to increase of deficiency, additional amounts, or additions to the tax

Except as provided by section 7463, the Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or any addition to the tax should be assessed, if claim therefor is asserted by the Secretary at or before the hearing or a rehearing.

(b) Jurisdiction over other years and quarters

The Tax Court in redetermining a deficiency of income tax for any taxable year or of gift tax for any calendar year or calendar quarter shall consider such facts with relation to the taxes for other years or calendar quarters as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year or calendar quarter has been overpaid or underpaid. Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.

(c) Taxes imposed by section 507 or chapter 41, 42, 43, or 44

The Tax Court, in redetermining a deficiency of any tax imposed by section 507 or chapter 41, 42, 43, or 44 for any period, act, or failure to act, shall consider such facts with relation to the taxes under chapter 41, 42, 43, or 44 for other periods, acts, or failures to act as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the taxes under chapter 41, 42, 43, or 44 for any other period, act, or failure to act have been overpaid or underpaid. The Tax Court, in redetermining a deficiency of any second tier tax (as defined in section 4963(b)), shall make a determination with respect to whether the taxable event has been corrected.

(d) Final decisions of Tax Court

For purposes of this chapter, chapter 41, 42, 43, or 44, and subtitles A or B the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 7481.

(e) Cross reference

For provision giving Tax Court jurisdiction to order a refund of an overpayment and to award sanctions, see section 6512(b)(2).

26 U.S.C. § 6402. Authority to make credits or refunds

(a) General rule

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e), and (f), refund any balance to such person.

(b) Credits against estimated tax

The Secretary is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

* * *