

No. \_\_\_\_\_

IN THE

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**SUPREME COURT OF THE UNITED STATES**

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JON D. ADAMS,

*Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE

*Respondent*

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On Petition for Writ of Certiorari  
To The United States Court of Appeals  
for the Fifth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED FOR REVIEW**

The Appellant (hereinafter referred to as “the Taxpayer”) is seeking abatement of interest assessed by the Appellee (hereinafter referred to as “the Commissioner”) for the 1999 tax year, to which the Commissioner has denied. The question presented for review by the Supreme Court of the United States of America is whether the Fifth Circuit Court of Appeals erred in holding that the Taxpayer was not entitled to interest abatement under 26 U.S.C.A. § 6404(e) when it relied on *Lee v. Commissioner*, which has been distinguished by more recent case law.

## **STATEMENT OF PARTIES AND PROCEEDINGS**

The Appellant, Jon D. Adams, respectfully avers that the caption of the case contains the names of all the parties whose judgment is sought to be reviewed. Therefore, under Rule 14(1)(b)(i) of the Supreme Court Rules, a list of all parties is not necessary. Furthermore, a corporate disclosure statement is not required under Rule 29.6 and Rule 14(1)(b)(ii) of the Supreme Court Rules, as there is no nongovernmental corporation in this matter. In addition, pursuant to Rule 14(1)(b)(iii) of the Supreme Court Rules, the following is a list of all proceedings in other courts directly related to the case in this Court.

- *Adams v. Comm'r*, No. 17289-18, U.S. Tax Court. Judgment entered Sept. 13, 2019.
- *Adams v. Comm'r*, No. 19-60790, U.S. Court of Appeals for the Fifth Circuit. Judgment entered June 30, 2020. Rehearing denied July 28, 2020.

## TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW .....	i
STATEMENT OF PARTIES AND PROCEEDINGS .....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES .....	iv
CITATIONS OF THE OPINIONS AND ORDERS ENTERED BELOW .....	1
STATEMENT OF BASIS FOR JURISDICTION .....	2
APPLICABLE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS.....	3
STATEMENT OF THE CASE.....	5
ARGUMENT .....	8
APPENDIX.....	14

## TABLE OF AUTHORITIES

Cases	Page(s)
<i>Adams v. Comm'r</i> , 2019 WL 3797612 (2019) .....	ii, 1, 11
<i>Bucaro v. Commissioner</i> , T.C. Memo. 2009-247, 98 T.C.M. (CCH) 388, 393 (2009) .....	11, 12
<i>Foote v. Commr. of Internal Revenue</i> , T.C. Memo. 2015-187, <i>aff'd</i> , 700 F. App'x 760 (9th Cir. 2017) .....	11, 12
<i>Lee v. Commr. of Internal Revenue</i> , 113 T.C. 145 (1999) .....	8, 9
<i>Love v. Commr. of Internal Revenue</i> , 118 T.C.M. (CCH) 94 (Tax 2019) .....	11, 12, 13
<i>Nichols v. Commr. of Internal Revenue</i> , T.C. Memo. 2007-5, 2007 WL 79247 (2007) .....	9, 10
<i>Roudakov v. Commissioner</i> , T.C. Memo. 2017-121 (2017) .....	11, 12
<b>Statutes</b>	
26 U.S.C.A. § 6404 .....	i, 3, 8, 9, 10, 11, 12, 13, 14
26 U.S.C.A. § 6663 .....	3, 5
26 U.S.C.A. § 7482 .....	2, 3, 7, 14

28 U.S.C.A. § 1254 .....	2, 3
26 U.S.C.A. § 7206 .....	3, 5, 14

**CITATIONS OF THE OPINIONS AND ORDERS  
ENTERED BELOW**

*Adams v. Comm'r*, T.C. Memo. 2019-99, 2019 WL 3797612 (Aug. 12, 2019)

*Adams v. Comm'r*, 811 Fed. Appx. 276 (Mem), 126 A.F.T.R.2d 2020-5076 (June 30, 2020)

## **STATEMENT OF BASIS FOR JURISDICTION**

The judgment sought to be reviewed was entered by the Fifth Circuit Court of Appeals on June 30, 2020. The Appellant filed a Petition for Rehearing, which the Fifth Circuit Court of Appeals denied by way of Order entered July 28, 2020. 26 U.S.C.A. § 7482 provides, in pertinent part, that, in cases where a United States Court of Appeals reviews the decision of the Tax Court, the judgment of any such court shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code. 28 U.S.C.A. § 1254 provides, in pertinent part, that “[c]ases in the court of appeals may be reviewed by the Supreme Court by ... writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.”

Rule 13 of the Supreme Court Rules provides that a petition for writ of certiorari is timely filed when it is filed with the Clerk of the Court within 90 days after entry of an order denying discretionary review. The Appellant has filed this petition within 90 days from the Order of the Fifth Circuit Court of Appeals dated July 28, 2020. The Appellant avers that notification required by Rule 29.4(a) of the Supreme Court Rules has been made.

**APPLICABLE CONSTITUTIONAL PROVISIONS,  
TREATIES, STATUTES, ORDINANCES, AND  
REGULATIONS**

26 U.S.C.A. § 6404: See appendix.

26 U.S.C.A. § 6663:

- (a) Imposition of penalty.**--If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.
- (b) Determination of portion attributable to fraud.**--If the Secretary establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes (by a preponderance of the evidence) is not attributable to fraud.
- (c) Special rule for joint returns.**--In the case of a joint return, this section shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse.

26 U.S.C.A. § 7482: See appendix.

26 U.S.C.A. § 7206: See appendix.

28 U.S.C.A. § 1254:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1)** By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
- (2)** By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

## **STATEMENT OF THE CASE**

The Taxpayer is the former owner of the Secrets Cabaret strip club and the Stardust Oasis bar, which were located in Jackson, Mississippi.<sup>1</sup> In October of 1999, the Taxpayer sold his interest in Secrets Cabaret.<sup>2</sup> On February 22, 2007, a grand jury issued an indictment and the Taxpayer was charged with two counts of filing false income tax returns pursuant to 26 U.S.C. § 7206(1) for the 1999 and 2000 tax years.<sup>3</sup> The Taxpayer was originally convicted on both counts; however, he appealed and the conviction related to the 1999 taxable year was vacated on February 17, 2009.<sup>4</sup>

On or about January 7, 2011, the Commissioner's Technical Services Division transferred the Taxpayer's 1999 and 2000 tax years to the Examination Division.<sup>5</sup> On January 14, 2014, the Commissioner issued its Notice of Deficiency for the 1999 tax year to the Taxpayer, indicating the Taxpayer was liable for a \$111,151.00 deficiency and a \$83,363.25 fraud penalty pursuant to 26 U.S.C.A. § 6663.<sup>6</sup>

On or about April 21, 2014, the Taxpayer filed a petition to the United States Tax Court (hereinafter referred to as "the USTC") in response to the Notice of Deficiency for the 1999 tax year.<sup>7</sup> At the conclusion of such proceeding, the USTC entered a stipulated Decision on June 10, 2016, wherein the parties agreed that the Taxpayer was liable for a \$91,762.34

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<sup>1</sup> ROA.189.

<sup>2</sup> ROA.189.

<sup>3</sup> ROA.190.

<sup>4</sup> ROA.383.

<sup>5</sup> ROA.190.

<sup>6</sup> ROA.192.

<sup>7</sup> ROA.192.

deficiency and a \$68,821.73 fraud penalty.<sup>8</sup> The Commissioner posted the agreed deficiency and fraud penalty on the Taxpayer's account for the 1999 tax year on August 29, 2016.<sup>9</sup>

The Taxpayer prepared an IRS Form 843, Claim for Refund and Request for Abatement, requesting abatement of the grossly unfair amount of interest assessed for the 1999 tax year, and sent such form to the Commissioner's Taxpayer Advocate Service on or about March 3, 2017.<sup>10</sup> The Commissioner denied the Taxpayer's request for abatement of interest for the 1999 tax year on June 2, 2017.<sup>11</sup> The Taxpayer then filed sent a Formal Written Protest of Denial of Interest Abatement to the Commissioner on July 3, 2017.<sup>12</sup> A Final Determination was issued on February 27, 2018, denying the Taxpayer's request for interest abatement for the 1999 tax year.<sup>13</sup> The Taxpayer timely appealed this determination to the USTC on or about August 27, 2018.<sup>14</sup>

This matter was docketed for trial on April 29, 2019; however, this matter was stricken for trial and Judge Urda retained jurisdiction to allow for additional time to consider the Commissioner's pending Motion for Summary Judgment.<sup>15</sup> On August 12, 2019, a Memorandum Opinion was entered by the USTC, indicating the Commissioner's Motion for Summary Judgment would be granted and an appropriate order and decision would be entered at a

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<sup>8</sup> ROA.193.

<sup>9</sup> ROA.193.

<sup>10</sup> ROA.193.

<sup>11</sup> ROA.193.

<sup>12</sup> ROA.193.

<sup>13</sup> ROA.194.

<sup>14</sup> ROA.194.

<sup>15</sup> ROA.422.

later time.<sup>16</sup> On September 13, 2019, the USTC entered its Order and Decision, granting summary judgment in favor of the Commissioner.<sup>17</sup>

Aggrieved by this decision, the Taxpayer filed his Notice of Appeal on October 17, 2019, bringing the matter before the United States Court of Appeals for the Fifth Circuit (hereinafter referred to as “the Court of Appeals”).<sup>18</sup> The Court of Appeals entered its opinion in this matter on June 30, 2020, affirming the summary judgment order in favor of the Appellee and otherwise adopting the tax court’s analysis in full. The Taxpayer timely filed a Petition for Rehearing with the Court of Appeals on July 14, 2020. The Court of Appeals issued its Order denying the Taxpayer’s Petition for Rehearing on July 28, 2020.

The Court of Appeals had jurisdiction over this matter pursuant to 28 U.S.C.A. § 7482, which provides, in pertinent part, that the United States Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code. The Taxpayer sought review of the decision of the USTC.

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<sup>16</sup> ROA.531.

<sup>17</sup> ROA.544.

<sup>18</sup> ROA.550.

## ARGUMENT

The Court of Appeals determined that the mere passage of time is insufficient in establishing error or delay in performing a ministerial or managerial act. The Taxpayer avers, however, that the mere passage of time is insufficient in establishing error or delay in performing a ministerial or managerial act only absent a showing of unreasonable error or delay. The Taxpayer has shown unreasonable error or delay. Delays attributable to an IRS officer or employee being dilatory in performing a ministerial or managerial act as grounds for abatement of interest under 26 U.S.C.A. § 6404(e). The Taxpayer has identified specific instances where the Commissioner was dilatory in performing a ministerial or managerial act, thereby constituting grounds for abatement of interest. The Taxpayer avers that this is supported by more recent and applicable authority that was not properly considered by the Court of Appeals.

The Court of Appeals relied on the *Lee v. Comm'r* case, which states that “the mere passage of time does not establish error or delay in performing a ministerial or managerial act.” *Lee v. Comm'r*, 113 T.C. 145 (1999). However, the Taxpayer respectfully avers that the precedent set by *Lee v. Comm'r* has been distinguished by more recent opinions entered which delve into the provisions of 26 U.S.C.A. § 6404(e) as amended in 1996 to include managerial acts.

The taxpayer in the *Lee v. Comm'r* case was petitioning for abatement of interest with respect to the 1980 tax year. The amendment to 26 U.S.C.A. § 6404(e) which allows for relief from interest accrued due to undue delays by the Commissioner in

managerial acts, in addition to ministerial acts, is only effective for tax years beginning after July 30, 1996.<sup>19</sup> Therefore, managerial acts were not of concern to the Court in this case. It is in this context that the Court in *Lee v. Comm'r* concluded that “[t]he mere passage of time in the litigation phase of a tax dispute does not establish error or delay by the Commissioner in performing a ministerial act.” *Lee v. C.I.R.*, 113 T.C. 145, 150 (Tax 1999). Noticeably, the term “managerial acts” are not included in the Court’s opinion here.

Furthermore, the Taxpayer would also point out that the Court in *Lee v. Comm'r* specifically says that the mere passage of time *in the litigation phase* of a tax dispute does not establish error or delay. The Court makes it unclear whether the passage of time *outside the litigation phase* of a tax dispute would establish error or delay.

Several years later in 2007, the Court ruled on a similar case in *Nichols v. Comm'r*, T.C. Memo. 2007-5, 2007 WL 79247 (2007). Here, the Court similarly notes in footnote 5 that “[s]ection 6404(e) was amended in 1996 to allow relief from interest that piled up because of “managerial acts” by the IRS, but that amendment is effective only for tax years beginning after July 30, 1996.” The taxpayer in this case was petitioning for abatement of interest with respect to the 1994 tax year; therefore, the Court concluded that, while 26 U.S.C.A. § 6404(e) had been amended to include managerial acts, as the tax year in question was before July 30, 1996 the Court was required to use the “pre-amendment” provisions of 26 U.S.C.A. § 6404(e), which provided for interest abatement only in cases where there was a “any

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<sup>19</sup> Taxpayer Bill of Rights 2, Pub.L. 104-168, sec. 301(a)(2), 110 Stat. 1457

deficiency attributable \* \* \* to any error or delay by an officer or employee of the Internal Revenue Service \* \* \* in performing a ministerial act,” though only when “no significant aspect of such error or delay can be attributed to the taxpayer \* \* \*. *Nichols v. Comm'r*, T.C. Memo. 2007-5, 2007 WL 79247 (2007).

In its analysis, the Court noticeably indicates that “[t]he regulations illustrate how the Commissioner applies this definition with numerous examples. [internal citation omitted]. A consistent theme in the examples is that decisions on allocating IRS personnel are “managerial,” not “ministerial,” meaning that delays caused by the Nicholases’ file sitting “on the respective personnel’s desk”—even if we assume on a summary judgment motion that those delays are completely the IRS’s fault—from the onset of the audit until the execution of the Form 870 are not ministerial. *Nichols v. Comm'r*, T.C. Memo. 2007-5, 2007 WL 79247 (2007).

The Court seems to infer here that delays caused by the taxpayers’ file setting on the respective personnel’s desk are not ministerial, but that they may be managerial. The Court seems to further infer that if the tax year in question was after 1996 and the amended provisions of 26 U.S.C.A. § 6404(e) applied that there could have been a showing of undue delay by the Commissioner with respect to managerial acts, entitling the taxpayers to abatement of interest. This opinion seems to indicate a change in how 26 U.S.C.A. § 6404(e) is to be interpreted after the 1996 amendment including entitlement to abatement of interest due to undue delays by the Commissioner caused by managerial acts, in addition to ministerial acts.

Very recently, in 2019, the Court stated that “[s]ection 6404(e)(1)(B) authorizes the IRS

to abate assessed interest on “any payment \* \* \* to the extent that any unreasonable error or delay in such payment is attributable to \* \* \* [an IRS] officer or employee being erroneous or dilatory in performing a ministerial or managerial act.” *Love v. Commr. of Internal Revenue*, 118 T.C.M. (CCH) 94 (Tax 2019). The court further defined managerial and ministerial acts as follows: “A managerial act is “an administrative act \* \* \* involving the temporary or permanent loss of records or the \* \* \* management of personnel.” A ministerial act is a “procedural or mechanical act that does not involve the exercise of judgment or discretion.” *Love v. Commr. of Internal Revenue*, 118 T.C.M. (CCH) 94 (Tax 2019).

The Court in *Love v. Commr. of Internal Revenue* clearly includes management of personnel as an example of managerial acts. In addition, the Court expressly identifies delays attributable to an IRS officer or employee being dilatory in performing a ministerial or managerial act as grounds for abatement of interest under 26 U.S.C.A. § 6404(e). The Taxpayer would note that “dilatory”, as defined in the Merriam-Webster dictionary, can be described as “tending or intended to cause delay” and is “characterized by procrastination”.

The Tax Court’s decision in the underlying matter, states that [w]e have also explained that the mere passage of time does not establish error or delay in performing a ministerial or a managerial act.” *Adams v. Comm'r*, 2019 WL 3797612 at \*5 (citing *Roudakov v. Commissioner*, T.C. Memo. 2017-121, at \*9; *Foote v. Commissioner*, at \*23; *Bucaro v. Commissioner*, T.C. Memo. 2009-247, 98 T.C.M. (CCH) 388, 393 (2009)) However, the case law cited by the Tax Court in its decision actually states that “[t]he mere passage of time, absent a showing of

“unreasonable error or delay by an [IRS] officer or employee \* \* \* in performing a ministerial or managerial act” under section 6404(e)(1)(A), is insufficient to justify abatement of interest pursuant to that provision.” *Roudakov v. Commissioner*, T.C. Memo. 2017-121, at \*9 (emphasis added). The Taxpayer avers that the mere passage of time is insufficient in establishing error or delay in performing a ministerial or managerial act only absent a showing of unreasonable error or delay. This is logical, as delays by their very nature result in additional time being spent on whatever is being delayed.

The Court of Appeals stated the Taxpayer continued to maintain that his tax interest is subject to abatement because of the lapse in time in which various IRS tax personnel were reviewing his deficiency case. However, this is only partly true. The Taxpayer asserts that his arguments on appeal were that his tax interest was subject to abatement because of unreasonable delays by various IRS tax personnel which resulted in unreasonably long lapses in time. The Taxpayer avers that *Love v. Commr. of Internal Revenue* should apply in the instant matter and that the Taxpayer would therefore be entitled to abatement of interest due to the dilatory actions of the Commissioner identified on appeal.

In conclusion, the mere passage of time is insufficient in establishing error or delay in performing a ministerial or managerial act only absent a showing of unreasonable error or delay. *Roudakov v. Commissioner*, T.C. Memo. 2017-121, at \*9; *Foote v. Commissioner*, at \*23; *Bucaro v. Commissioner*, T.C. Memo. 2009-247, 98 T.C.M. (CCH) 388, 393 (2009). The Taxpayer has shown unreasonable error or delay. Delays attributable to an

IRS officer or employee being dilatory in performing a ministerial or managerial act as grounds for abatement of interest under 26 U.S.C.A. § 6404(e). *Love v. Commr. of Internal Revenue*, 118 T.C.M. (CCH) 94 (Tax 2019). The Taxpayer has identified specific instances where the Commissioner was dilatory in performing a ministerial or managerial act, thereby constituting grounds for abatement of interest. The decision of the Court of Appeals runs contrary to more recent case law.

Respectfully submitted,

/s/ James G. McGee, Jr.

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## APPENDIX

Opinion of the United States Court of Appeals for the Fifth Circuit .....	A-001
Judgment of the United States Court of Appeals for the Fifth Circuit .....	A-005
Order of the United States Court of Appeals for the Fifth Circuit .....	A-006
Memorandum Opinion of the United States Tax Court .....	A-007
Order and Decision of the United States Tax Court .....	A-020
26 U.S.C.A. § 6404 .....	A-021
26 U.S.C.A. § 7482 .....	A-026
26 U.S.C.A. § 7206 .....	A-029

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

June 30, 2020

Lyle W. Cayce  
Clerk

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No. 19-60790  
Summary Calendar

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JON D. ADAMS,

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee

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Appeal from a Decision of the  
United States Tax Court  
Tax Court No. 17289-18

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Before STEWART, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:\*

Respondent-Appellee the Commissioner of Internal Revenue issued Petitioner-Appellant Jon D. Adams (Adams) a notice of deficiency for Adams's 1999 tax return. Adams appealed this tax determination, and the tax court entered a stipulated decision in agreement with both parties. However, this stipulation did not otherwise affect the \$207,043.74 in interest that had accrued for his 1999 tax return.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 19-60790

In turn, Adams subsequently made a request for abatement of interest. The Commissioner denied such request, and Adams appealed to the tax court. Upon motion, the court granted summary judgment in the Commissioner's favor, holding that the Commissioner had not abused his discretion in denying taxpayer's request for abatement. Adams appeals this decision. We affirm.

I.

This appeal primarily stems from Adams's failure to account for the sale of his Jackson, Mississippi cabaret establishment on his 1999 tax return. This omission has cast a shadow on Adams ever since. He was convicted for falsifying his 1999 and 2000 tax returns,<sup>1</sup> and subsequently, the Commissioner levied this civil tax deficiency for the 1999 tax return that carried the interest charge at issue. Several events that occurred during this civil proceeding are worth noting.<sup>2</sup>

The civil examination into Adams's tax liabilities for the 1999 and 2000 tax years began in January 2011. Adams and the Internal Revenue Service (IRS) resolved the tax penalties for the 2000 tax return. As to the 1999 tax return, the IRS issued a \$111,151.00 tax deficiency that carried a civil fraud penalty of \$83,363.25, pursuant to Internal Revenue Code (IRC) § 6663. Adams petitioned for redetermination on this tax deficiency, and in 2016, the tax court entered a stipulated decision determining that Adams was liable for an income tax deficiency of \$91,762.34 and a civil fraud penalty of \$68,821.73.

Adams then filed a Form 843 (Claim for Refund and Request for Abatement) to request abatement of the \$207,043.74 in accrued interest for the

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<sup>1</sup> The criminal proceedings are chronicled in *United States v. Adams*, 314 F. App'x 633, 635–37 (5th Cir. 2009) (per curiam). Of note, we vacated the conviction as to the 1999 count. *Id.* at 638–44.

<sup>2</sup> We also adopt the detailed factual and procedural background history in *Adams v. Comm'r*, T.C. Memo. 2019-99, 2019 WL 3797612 (Aug. 12, 2019). The parties do not disagree with the factual or the procedural background considered by the tax court.

No. 19-60790

1999 tax year. Adams's grounds for abatement were that (1) the interest amount was excessive under IRC § 6404(a); and (2) the IRS unreasonably delayed processing Adams's deficiency case, pursuant to IRC § 6404(e)(1). The Commissioner denied Adams's request. According to the Commissioner, IRC § 6404(b) precluded Adams from premising an abatement on IRC § 6404(a), and Adams failed to articulate a specific error or delay by the IRS in the performance of a ministerial or managerial act. Adams filed a Formal Written Protest of Denial of Interest Abatement. An appellate officer was assigned to the case and issued a Final Determination in February 2018 that affirmed the denial of Adams's request for interest abatement. Adams appealed to the tax court. The Commissioner subsequently moved for summary judgment, which the tax court granted. Adams now appeals the tax court decision.

## II.

After considering the parties' arguments as briefed on appeal, and after reviewing the record, the applicable law, and the tax court's judgment and reasoning, we affirm the tax court's finding that the Commissioner did not commit an abuse of discretion in denying Adams's request for interest abatement.

"It follows that in reviewing a Tax Court decision, the duty of the court of appeals is to consider whether the Tax Court committed error." *Comm'r v. McCoy*, 484 U.S. 3, 6 (1987) (per curiam).

First, on appeal, Adams abandons his assertion that he is entitled to an abatement of interest under IRC § 6404(a). The tax court dismissed this argument because Adams is seeking abatement of his 1999 income tax year and IRC § 6404(b) precludes abatement of interest on income tax. *See Adams v. Comm'r*, T.C. Memo. 2019-99, 2019 WL 3797612, at \*3–4 (Aug. 12, 2019). We agree, and, because Adams no longer stands by this position on appeal, we

No. 19-60790

affirm. *See Cinel v. Connick*, 15 F.3d 1338, 1345 (5th Cir. 1994) (“A party who inadequately briefs an issue is considered to have abandoned the claim.”).

Under IRC § 6404(e)(1)(A), Adams may seek interest abatement, at the Commissioner’s discretion, if Adams demonstrates that there is an unreasonable error or delay on the part of the IRS in the performance of a ministerial or managerial act. “Ministerial act means a procedural or mechanical act that does not involve the exercise of judgment or discretion ....” 26 C.F.R. § 301.6404-2(b)(2). According to the tax court, Adams only pointed to examples of the IRS using its judgment and discretion to discern a tax determination for his tax year, and “mere passage of time does not establish error or delay in performing a ministerial or a managerial act.” *Adams*, 2019 WL 3797612, at \*5. On appeal, Adams does not change his tone and continues to maintain that his tax interest is subject to abatement because of the lapse in time in which various IRS tax personnel were reviewing his deficiency case. Again, the “decision on how to proceed in the litigation phase of the case necessarily required the exercise of judgment and thus cannot be a ministerial act.” *Lee v. Comm’r*, 113 T. C. 145, 150–51 (1999); *see also Bartelma v. Comm’r*, T.C. Memo. 2005-64, 2005 WL 713798, at \*3 (March 30, 2005) (stating that “[d]eciding how and when to work on cases, based on an evaluation of the entire caseload and workload priorities, is not a ministerial act”). Because his examples only identify decision-making instances on the part of the IRS that involve the exercise of judgment or discretion, Adams fails to identify events of unreasonable delay that fall within the definition of a “ministerial or managerial act.” *Cf.* 26 C.F.R. § 301.6404-2(b). Adams therefore falls short in providing grounds for interest abatement.

For the foregoing reasons, we AFFIRM the summary judgment order in favor of the Commissioner and otherwise adopt the tax court’s analysis in full.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 19-60790  
Summary Calendar

---

T.C. Docket No. 17289-18

United States Court of Appeals  
Fifth Circuit

**FILED**  
June 30, 2020

Lyle W. Cayce  
Clerk

JON D. ADAMS,

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee

---

Appeal from a Decision of the  
United States Tax Court

---

Before STEWART, HIGGINSON, and COSTA, Circuit Judges.

**J U D G M E N T**

This cause was considered on the record of the United States Tax Court and the briefs on file.

It is ordered and adjudged that the decision of the United States Tax Court is affirmed.

IT IS FURTHER ORDERED that petitioner-appellant pay to respondent-appellee the costs on appeal to be taxed by the Clerk of this Court.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 19-60790

---

JON D. ADAMS,

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee

---

Appeal from a Decision of the  
United States Tax Court

---

**ON PETITION FOR REHEARING**

Before STEWART, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

/s/ Carl E. Stewart  
UNITED STATES CIRCUIT JUDGE

**RECEIVED**

By Mary Loecher at 1:57 pm, Aug 13, 2019

T.C. Memo. 2019-99

## UNITED STATES TAX COURT

JON D. ADAMS, Petitioner v.  
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 17289-18.

Filed August 12, 2019.

James G. McGee, Jr., for petitioner.

Ardney J. Boland III and Susan S. Canavello, for respondent.

## MEMORANDUM OPINION

URDA, Judge: In 1999 petitioner, Jon D. Adams, sold Secrets Cabaret (Secrets) in Jackson, Mississippi, but did not fully account for the sale on his 1999 Federal income tax return--original or amended. This particular secret did not keep, and Mr. Adams faced first criminal prosecution (for false statements on an amended 1999 Federal income tax return) and then civil deficiency proceedings

[\*2] before the Internal Revenue Service (IRS) and this Court. In 2016 we entered a stipulated decision according to which Mr. Adams agreed to a 1999 tax deficiency of \$91,762 and a civil fraud penalty under section 6663<sup>1</sup> of \$68,822. Adams v. Commissioner, T.C. Dkt. No. 8808-14 (June 10, 2016).

Mr. Adams returns to this Court challenging the IRS' later determination to deny his request for the abatement of interest on his 1999 tax liability. The Commissioner moves for summary judgment, contending that no disputed issues of material fact remain and that the IRS did not abuse its discretion in denying Mr. Adams' request. We agree and accordingly will grant the motion.

#### Background

Mr. Adams resided in Jackson, Mississippi, at the time he filed the petition in this case. He also lived there in 1999, when the back story to our case picks up. Mr. Adams owned two Jackson establishments, one of which (Secrets) he sold in October of that year. Mr. Adams did not report the sale proceeds in his original 1999 Federal income tax return. Mr. Adams filed an amended return in 2001 in which he added approximately \$450,000 to his taxable income, ostensibly to reflect the proceeds from selling Secrets.

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<sup>1</sup>All section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure. We round all dollar amounts to the nearest dollar.

[\*3] A. Criminal Investigation

The IRS launched a criminal investigation in 2002. Five years later Mr. Adams was indicted under section 7206(1) for making false statements on his 1999 amended tax return, as well as on his 2000 tax return. Although a jury convicted on both counts, the Court of Appeals for the Fifth Circuit vacated the conviction as to the 1999 count, citing defects in the indictment. See United States v. Adams, 314 F. App'x 633, 638-644 (5th Cir. 2009). The Government elected not to reindict.<sup>2</sup>

B. Examination and Deficiency Proceedings

The civil examination into Mr. Adams' proper tax liabilities for 1999 and 2000 began in January 2011. From March until August 2011 an examining officer gathered and reviewed various files, established initial telephone contact with Mr. Adams, and obtained the necessary authorization (from the IRS Fraud Technical Advisor) to assert a civil fraud penalty. By letter dated August 11, 2011, the examining officer informed Mr. Adams that his returns for his 1999 and 2000 taxable years had been selected for examination. Although the examining officer

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<sup>2</sup>Mr. Adams subsequently sought postconviction relief under 28 U.S.C. sec. 2255 (2006) as to his conviction for false statements on his 2000 tax return. The District Court for the Southern District of Mississippi denied that relief in 2010. See United States v. Adams, No. 3:07cr31-DPJ-LRA, 2010 WL 55937 (S.D. Miss. Jan. 4, 2010). Mr. Adams was released from prison in 2011.

[\*4] tried to set up a meeting, Mr. Adams demurred on the grounds that he lacked information and that representatives would act on his behalf.

Mr. Adams' representatives did not officially appear until October. During the interim the examining officer did not stand still; her notes reflect that she researched various issues and continued to actively work on the case. After the representatives appeared, she scheduled a meeting during which the parties disputed the impact of the Court of Appeals' decision on the statute of limitations governing assessment for the 1999 taxable year.

In the wake of this meeting the examining officer continued her examination into both taxable years, with the parties resolving the 2000 liability in April 2012. Unable to do the same for 1999, the IRS issued on May 16, 2012, a Letter 950 (30-day letter), which set forth the IRS' proposed changes for Mr. Adams' 1999 taxable year. As most relevant to this case, the 30-day letter proposed increasing Mr. Adams' taxable income by \$290,700, of which \$277,551 was attributable (apparently) to the sale of Secrets. This adjustment resulted in a tax deficiency of \$111,082. The 30-day letter also proposed a civil fraud penalty of \$83,311.

Mr. Adams filed an appeal to the IRS Office of Appeals in June 2012. In September of that year, the Office of Appeals assigned the case to an Appeals

[\*5] officer, whose initial letter advised Mr. Adams that “[i]f you wish to stop or reduce interest on part or all of the balance due, you can send tax payments to the Appeals office working your case.” Mr. Adams made no such payments.

According to his case activity notes, the Appeals officer did intermittent work on the case between September 2012 and April 2013. On April 9, 2013, the Appeals officer sent Mr. Adams a letter giving him two weeks to provide documentation or an explanation weighing against the IRS’ proposed adjustments and civil fraud penalty.

On April 22, 2013, Mr. Adams’ representative asked for more time to familiarize himself with the matter and to assemble information. Although the Appeals officer granted a brief extension, no information came. Between May and the end of July, the Appeals officer prepared a Form 5402-c, Appeals Transmittal and Case Memo, which recommended sustaining the IRS’ position as to the adjustments to taxable income and the imposition of the fraud penalty. He also prepared a draft statutory notice of deficiency for review by IRS lawyers.

An IRS Appeals team manager approved the Form 5402-c on January 8, 2014, and a notice of deficiency was issued to Mr. Adams on January 14. The notice determined a tax deficiency of \$111,151 and a fraud penalty of \$83,363. Mr. Adams filed a timely petition for redetermination in this Court in April 2014.

[\*6] The case culminated in a stipulated decision entered June 10, 2016, according to which the parties agreed to a 1999 deficiency of \$91,762 and a fraud penalty of \$68,822.

C. Interest Abatement Request

In March 2017 Mr. Adams filed a Form 843, Claim for Refund and Request for Abatement, in which he asked for the abatement of \$207,044 in interest for his 1999 taxable year.<sup>3</sup> Attached to the Form 843 was a letter from Mr. Adams' attorney (dated February 15, 2017, and addressed to the Taxpayer Advocate Service). Mr. Adams' attorney argued that abatement was justified under section 6404(a) and (e). He asserted that section 6404(a) authorized abatement because the interest amount was "grossly unfair". He also argued for abatement under section 6404(e)(1) because of "arbitrary delays by the Commissioner".

The IRS issued a preliminary rejection of the abatement request on the ground that there had been no unreasonable error or delay relating to the performance of a ministerial or a managerial act. The revenue agent assigned to the case explained that section 6404(b) precluded Mr. Adams from premising an

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<sup>3</sup>Respondent purports to include a copy of Mr. Adams' Form 843 and supporting letter as an exhibit to a declaration in support of respondent's motion for summary judgment. The letter, however, seems to be missing the last page. Mr. Adams did not object to this (ostensibly) incomplete exhibit, and the issue has no bearing on our resolution of this case.

[\*7] abatement claim on section 6404(a). She further observed that Mr. Adams had failed to identify a specific unreasonable error or delay in the performance of a ministerial or a managerial act under section 6404(e)(1).

Mr. Adams appealed but fared no better the second time around. On February 27, 2018, the IRS issued a final determination denying Mr. Adams' request for abatement of interest. The IRS' determination maintained that "taxpayer failed to show that any IRS employee or officer committed unreasonable error or delay in performing ministerial or managerial acts".

Mr. Adams filed a timely petition under section 6404(h)(1) challenging the IRS' denial of his request for abatement of interest.<sup>4</sup>

### Discussion

The purpose of summary judgment is to expedite litigation and avoid costly, time-consuming, and unnecessary trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Under Rule 121(b) the Court may grant summary judgment when there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520

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<sup>4</sup>Mr. Adams' petition did not address whether he met the net worth requirement incorporated into sec. 6404(h)(1). Mr. Adams has since provided us with sufficient information to conclude that he satisfies this requirement (and that we can exercise jurisdiction). See, e.g., Vercel v. Commissioner, T.C. Memo. 2014-20, at \*3.

[\*8] (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). While we construe factual materials and inferences drawn from them in the light most favorable to the nonmoving party, that party may not rest upon the mere allegations or denials of his pleadings but instead must set forth specific facts showing that there is a genuine dispute for trial. Rule 121(d); see Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

A. Abatement of Interest Framework

Interest on a Federal income tax liability arises automatically under section 6601. We generally lack jurisdiction over issues concerning interest computations. Urbano v. Commissioner, 122 T.C. 384, 390 (2004); see also Med James, Inc. v. Commissioner, 121 T.C. 147, 151 (2003). Congress authorized the Commissioner to abate interest for reasons specified in section 6404, subject to abuse-of-discretion review by this Court. See sec. 6404(h); Woodral v. Commissioner, 112 T.C. 19, 23 (1999); Foote v. Commissioner, T.C. Memo. 2015-187, at \*15-\*16, aff'd, 700 F. App'x 760 (9th Cir. 2017).

This case implicates three subsections of section 6404. Section 6404(a)(1) empowers the IRS to abate the unpaid portion of the assessment of any tax or any liability in respect thereof that is "excessive in amount". But what section 6404(a) gives, section 6404(b) takes away (in certain circumstances). See, e.g., Urbano v.

[\*9] Commissioner, 122 T.C. at 390. Section 6404(b) provides that a taxpayer may not file a claim for abatement “in respect of an assessment of any tax imposed under subtitle A or B.” We have held that section 6404(b) precludes abatement under section 6404(a)(1) of interest on income tax. See Urbano v. Commissioner, 122 T.C. at 395; Kersh v. Commissioner, T.C. Memo. 2009-260, 98 T.C.M. (CCH) 458, 462 (2009); Corson v. Commissioner, T.C. Memo. 2009-95, 97 T.C.M. (CCH) 1498, 1500 (2009).

Section 6404(e)(1)(A) authorizes the Commissioner to abate an assessment of interest on “any deficiency attributable \* \* \* to any unreasonable error or delay by an officer or employee of the Internal Revenue Service \* \* \* in performing a ministerial or managerial act”.<sup>5</sup> “Ministerial act \* \* \* means a procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer’s case after all prerequisites to the act, such as conferences and review by supervisors, have taken place.” Sec. 301.6404-2(b)(2), Proced. & Admin. Regs. A “[m]anagerial act” is “an administrative act that occurs during the processing of a taxpayer’s case involving

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<sup>5</sup>Although sec. 6404(b) limits sec. 6404(a), it does not alter the IRS’ authority under sec. 6404(e). See Corbalis v. Commissioner, 142 T.C. 46, 53 (2014); Corson v. Commissioner, T.C. Memo. 2009-95, 97 T.C.M. (CCH) 1498, 1500-1501 (2009); see also sec. 301.6404-2(a)(1)(i), Proced. & Admin. Regs.

[\*10] the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel.” Id. subpara. (1). A decision concerning the proper application of Federal tax law is neither a managerial nor a ministerial act. Id. para. (b).

The flush language of section 6404(e)(1) adds two caveats. First, an error or delay is taken into account only after the IRS has contacted the taxpayer in writing with respect to the deficiency or payment. Sec. 6404(e)(1) (flush language). Second, an error or delay is considered “only if” no significant aspect of the error or delay is attributable to the taxpayer involved. Id.

B. Analysis

The undisputed facts show that the IRS did not abuse its discretion in denying Mr. Adams’ interest abatement request under either section 6404(a) or (e)(1). As an initial matter, relief under section 6404(a) is unavailable to Mr. Adams because he seeks abatement of interest on an income tax. Section 6404(b) precludes such relief. See Urbano v. Commissioner, 122 T.C. at 395; Corson v. Commissioner, 98 T.C.M. (CCH) at 1500; Kersh v. Commissioner, 98 T.C.M. (CCH) at 462.

As to section 6404(e)(1), Mr. Adams asserts that two separate periods show unreasonable delays in performing ministerial or managerial acts that justify

[\*11] abatement: (1) the period of the criminal investigation and prosecution of Mr. Adams, during which the IRS chose not to pursue a civil examination, and (2) the period of the civil deficiency examination and Tax Court litigation. Neither suffices.

The flush language of section 6404(e)(1) authorizes abatement of interest only “after the Internal Revenue Service has contacted the taxpayer in writing with respect to” the deficiency in question. In other words, “the period pursuant to section 6404(e)(1) may begin when the IRS commences an audit.” Allcorn v. Commissioner, 139 T.C. 53, 57 (2012); see also Sims v. Commissioner, T.C. Memo. 1999-414, 78 T.C.M. (CCH) 1198, 1200 (1999). Although Mr. Adams contends that the period should begin with the first issuance of written contact regarding his criminal investigation, he offers no support for deviating from our precedent. So we will not. As both parties agree that the IRS initiated its audit (in writing) on August 11, 2011, we conclude that Mr. Adams is not entitled to abatement under section 6404(e)(1) for any period before that date.<sup>6</sup>

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<sup>6</sup>Even if we were to adopt Mr. Adams’ interpretation, it would not avail him. We have repeatedly held that the IRS’ decision to pause civil deficiency proceedings until the conclusion of a criminal case is not a “ministerial act”. See, e.g., Taylor v. Commissioner, 113 T.C. 206, 212-213 (1999), aff’d, 9 F. App’x 700 (9th Cir. 2001); Matthews v. Commissioner, T.C. Memo. 2008-126, 95 T.C.M. (CCH) 1486, 1492 (2008). We have explained that this policy “is intended to

(continued...)

[\*12] Nor is he entitled to abatement for any period after that date. The undisputed facts show that the examining officer and the Appeals officer--in concert with the IRS Fraud Technical Advisor, managers, and lawyers--worked to determine Mr. Adams' correct tax liability and that lawyers from the IRS Office of Chief Counsel then defended the IRS' determination before this Court. "It is well settled that a decision concerning the proper application of Federal income tax law necessarily requires the exercise of judgment and discretion." Foote v. Commissioner, at \*20; see also sec. 301.6404-2(b), Proced. & Admin. Regs. We have also explained that the mere passage of time does not establish error or delay in performing a ministerial or a managerial act. See, e.g., Roudakov v. Commissioner, T.C. Memo. 2017-121, at \*9; Foote v. Commissioner, at \*23; Bucaro v. Commissioner, T.C. Memo. 2009-247, 98 T.C.M. (CCH) 388, 393 (2009). And any decision by respondent's counsel "on how to proceed in the litigation phase of the case necessarily required the exercise of judgment and thus cannot be a ministerial act." Foote v. Commissioner, at \*29 (quoting Swanson v.

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<sup>6</sup>(...continued)  
avoid the conflicts between civil and criminal discovery rules, the issues related to witness testimony and self-incrimination, and the problems of inherent confusion that could result if civil and criminal proceedings were allowed to take place concurrently." Matthews v. Commissioner, 95 T.C.M. (CCH) at 1492. This decision likewise falls outside the definition of a "managerial act". See sec. 301.6404-2(b)(1), Proced. & Admin. Regs.

[\*13] Commissioner, T.C. Memo. 2010-131, 99 T.C.M. (CCH) 1542, 1545 (2010); see also Krehnbrink v. Commissioner, T.C. Memo. 2019-56, at \*14 (“The passage of time during litigation does not establish error or delay in the performance of a ministerial or managerial act.”).<sup>7</sup>

Finding no abuse of discretion in any respect, we will grant summary judgment for respondent and affirm the IRS’ determination to deny Mr. Adams’ request for abatement of interest relating to his 1999 taxable year.

To reflect the foregoing,

An appropriate order and decision  
will be entered.

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<sup>7</sup>The undisputed facts also show that a significant part of the purported delay both before the IRS and in this Court was attributable to (reasonable) requests by Mr. Adams’ representatives for continuances. The flush language of sec. 6404(e)(1) would prohibit abatement on this ground as well.

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217 PA**

JON D. ADAMS, )  
Petitioners, )  
v. ) Docket No. 17289-18.  
COMMISSIONER OF INTERNAL )  
REVENUE, )  
Respondent )

**ORDER AND DECISION**

Pursuant to the determination of the Court as set forth in its Memorandum Opinion (T.C. Memo. 2019-99), filed August 12, 2019, it is hereby

ORDERED that respondent's motion for summary judgment, filed February 22, 2019, is granted. It is further

ORDERED AND DECIDED that petitioner is not entitled to abatement of interest under I.R.C. section 6404 with respect to tax year 1999.

**(Signed) Patrick J. Urda**  
**Judge**

ENTERED: **SEP 13 2019**

**SERVED Sep 13 2019**

United States Code Annotated

Title 26. Internal Revenue Code (Refs & Annos)

Subtitle F. Procedure and Administration (Refs & Annos)

Chapter 65. Abatements, Credits, and Refunds

Subchapter A. Procedure in General (Refs & Annos)

26 U.S.C.A. § 6404, I.R.C. § 6404

## § 6404. Abatements

Effective: March 23, 2018

Currentness

**(a) General rule.**--The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which--

(1) is excessive in amount, or

(2) is assessed after the expiration of the period of limitation properly applicable thereto, or

(3) is erroneously or illegally assessed.

**(b) No claim for abatement of income, estate, and gift taxes.**--No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under subtitle A or B.

**(c) Small tax balances.**--The Secretary is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary determines under uniform rules prescribed by the Secretary that the administration and collection costs involved would not warrant collection of the amount due.

**(d) Assessments attributable to certain mathematical errors by Internal Revenue Service.**--In the case of an assessment of any tax imposed by chapter 1 attributable in whole or in part to a mathematical error described in section 6213(g)(2)(A), if the return was prepared by an officer or employee of the Internal Revenue Service acting in his official capacity to provide assistance to taxpayers in the preparation of income tax returns, the Secretary is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the 30th day following the date of notice and demand by the Secretary for payment of the deficiency.

**(e) Abatement of interest attributable to unreasonable errors and delays by Internal Revenue Service.**--

(1) **In general.**--In the case of any assessment of interest on--

**(A)** any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act, or

**(B)** any payment of any tax described in section 6212(a) to the extent that any unreasonable error or delay in such payment is attributable to such an officer or employee being erroneous or dilatory in performing a ministerial or managerial act,

the Secretary may abate the assessment of all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

**(2) Interest abated with respect to erroneous refund check.**--The Secretary shall abate the assessment of all interest on any erroneous refund under section 6602 until the date demand for repayment is made, unless--

**(A)** the taxpayer (or a related party) has in any way caused such erroneous refund, or

**(B)** such erroneous refund exceeds \$50,000.

**(f) Abatement of any penalty or addition to tax attributable to erroneous written advice by the Internal Revenue Service.**--

**(1) In general.**--The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

**(2) Limitations.**--Paragraph (1) shall apply only if--

**(A)** the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

**(B)** the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

**[(3) Repealed.** Pub.L. 113-295, Div. A, Title II, § 221(a)(111), Dec. 19, 2014, 128 Stat. 4054]

**(g) Suspension of interest and certain penalties where Secretary fails to contact taxpayer.**--

**(1) Suspension.**--

**(A) In general.**--In the case of an individual who files a return of tax imposed by subtitle A for a taxable year on or before the due date for the return (including extensions), if the Secretary does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability before the close of the 36-month period beginning on the later of--

- (i)** the date on which the return is filed; or
- (ii)** the due date of the return without regard to extensions,

the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

**(B) Separate application.**--This paragraph shall be applied separately with respect to each item or adjustment.

If, after the return for a taxable year is filed, the taxpayer provides to the Secretary 1 or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, clause (i) shall be applied by substituting the date the last of the documents was provided for the date on which the return is filed.

**(2) Exceptions.**--Paragraph (1) shall not apply to--

- (A)** any penalty imposed by section 6651;
- (B)** any interest, penalty, addition to tax, or additional amount in a case involving fraud;
- (C)** any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return;
- (D)** any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement;
- (E)** any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction with respect to which the requirement of section 6664(d)(3)(A) is not met and any listed transaction (as defined in 6707A(c)); or
- (F)** any criminal penalty.

**(3) Suspension period.**--For purposes of this subsection, the term "suspension period" means the period--

- (A)** beginning on the day after the close of the 36-month period under paragraph (1); and

**(B)** ending on the date which is 21 days after the date on which notice described in paragraph (1)(A) is provided by the Secretary.

**(h) Judicial review of request for abatement of interest.--**

**(1) In general.**--The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(ii) to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought--

**(A)** at any time after the earlier of--

**(i)** the date of the mailing of the Secretary's final determination not to abate such interest, or

**(ii)** the date which is 180 days after the date of the filing with the Secretary (in such form as the Secretary may prescribe) of a claim for abatement under this section, and

**(B)** not later than the date which is 180 days after the date described in subparagraph (A)(i).

**(2) Special rules.--**

**(A) Date of mailing.**--Rules similar to the rules of section 6213 shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

**(B) Relief.**--Rules similar to the rules of section 6512(b) shall apply for purposes of this subsection.

**(C) Review.**--An order of the Tax Court under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

**(i) Cross reference.--**

For authority to suspend running of interest, etc. by reason of Presidential declared disaster or terroristic or military action, see section 7508A.

**CREDIT(S)**

(Aug. 16, 1954, c. 736, 68A Stat. 792; Pub.L. 94-455, Title XII, § 1212(a), Title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1712, 1834; Pub.L. 96-589, § 6(b)(2), Dec. 24, 1980, 94 Stat. 3407; Pub.L. 99-514, Title XV, § 1563(a), Oct. 22, 1986, 100 Stat. 2762; Pub.L. 100-647, Title I, § 1015(n), Title VI, § 6229(a), Nov. 10, 1988, 102 Stat. 3572, 3733; Pub.L. 104-168, Title III, §§ 301(a), (b), 302(a), Title VII, § 701(c)(3), July 30, 1996, 110 Stat. 1457, 1464; Pub.L. 105-206, Title III, §§ 3305(a), 3309(a), July 22, 1998, 112 Stat. 743, 745; Pub.L. 105-277, Div. J, Title IV, § 4003(e)(2), Oct. 21, 1998, 112 Stat. 2681-909; Pub.L.

107-134, Title I, § 112(d)(1), Jan. 23, 2002, 115 Stat. 2434; Pub.L. 108-357, Title VIII, § 903(a) to (c), Oct. 22, 2004, 118 Stat. 1652; Pub.L. 109-135, Title III, § 303(b)(1), Dec. 21, 2005, 119 Stat. 2609; Pub.L. 110-28, Title VIII, § 8242(a), May 25, 2007, 121 Stat. 200; Pub.L. 113-295, Div. A, Title II, § 221(a)(111), Dec. 19, 2014, 128 Stat. 4054; Pub.L. 114-113, Div. Q, Title IV, § 421(a), Dec. 18, 2015, 129 Stat. 3123; Pub.L. 115-141, Div. U, Title IV, § 401(a)(288), Mar. 23, 2018, 132 Stat. 1198.)

26 U.S.C.A. § 6404, 26 USCA § 6404

Current through P.L. 116-169.

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United States Code Annotated

Title 26. Internal Revenue Code (Refs & Annos)

    Subtitle F. Procedure and Administration (Refs & Annos)

        Chapter 76. Judicial Proceedings

            Subchapter D. Court Review of Tax Court Decisions (Refs & Annos)

26 U.S.C.A. § 7482, I.R.C. § 7482

## § 7482. Courts of review

Effective: January 1, 2018

Currentness

### **(a) Jurisdiction.--**

**(1) In general.**--The United States Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code.

### **(2) Interlocutory orders.--**

**(A) In general.**--When any judge of the Tax Court includes in an interlocutory order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals may, in its discretion, permit an appeal to be taken from such order, if application is made to it within 10 days after the entry of such order. Neither the application for nor the granting of an appeal under this paragraph shall stay proceedings in the Tax Court, unless a stay is ordered by a judge of the Tax Court or by the United States Court of Appeals which has jurisdiction of the appeal or a judge of that court.

**(B) Order treated as Tax Court decision.**--For purposes of subsections (b) and (c), an order described in this paragraph shall be treated as a decision of the Tax Court.

**(C) Venue for review of subsequent proceedings.**--If a United States Court of Appeals permits an appeal to be taken from an order described in subparagraph (A), except as provided in subsection (b)(2), any subsequent review of the decision of the Tax Court in the proceeding shall be made by such Court of Appeals.

**(3) Certain orders entered under section 6213(a).**--An order of the Tax Court which is entered under authority of section 6213(a) and which resolves a proceeding to restrain assessment or collection shall be treated as a decision of the Tax Court for purposes of this section and shall be subject to the same review by the United States Court of Appeals as a similar order of a district court.

**(b) Venue.--**

**(1) In general.**--Except as otherwise provided in paragraphs (2) and (3), such decisions may be reviewed by the United States court of appeals for the circuit in which is located--

**(A)** in the case of a petitioner seeking redetermination of tax liability other than a corporation, the legal residence of the petitioner,

**(B)** in the case of a corporation seeking redetermination of tax liability, the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any judicial circuit, then the office to which was made the return of the tax in respect of which the liability arises,

**(C)** in the case of a person seeking a declaratory decision under section 7476, the principal place of business, or principal office or agency of the employer,

**(D)** in the case of an organization seeking a declaratory decision under section 7428, the principal office or agency of the organization,

**(E)** in the case of a petition under section 6234, the principal place of business of the partnership,

**(F)** in the case of a petition under section 6015(e), the legal residence of the petitioner, or

**(G)** in the case of a petition under section 6320 or 6330--

**(i)** the legal residence of the petitioner if the petitioner is an individual, and

**(ii)** the principal place of business or principal office or agency if the petitioner is an entity other than an individual.

If for any reason no subparagraph of the preceding sentence applies, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court or as of the time the petition seeking a declaratory decision under section 7428 or 7476, or the petition under section 6234, was filed with the Tax Court.

**(2) By agreement.**--Notwithstanding the provisions of paragraph (1), such decisions may be reviewed by any United States Court of Appeals which may be designated by the Secretary and the taxpayer by stipulation in writing.

**(3) Declaratory judgment actions relating to status of certain governmental obligations.**--In the case of any decision of the Tax Court in a proceeding under section 7478, such decision may only be reviewed by the Court of Appeals for the District of Columbia.

**(c) Powers.--**

**(1) To affirm, modify, or reverse.**--Upon such review, such courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

**(2) To make rules.**--Rules for review of decisions of the Tax Court shall be those prescribed by the Supreme Court under section 2072 of title 28 of the United States Code.

**(3) To require additional security.**--Nothing in section 7483 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

**(4) To impose penalties.**--The United States Court of Appeals and the Supreme Court shall have the power to require the taxpayer to pay to the United States a penalty in any case where the decision of the Tax Court is affirmed and it appears that the appeal was instituted or maintained primarily for delay or that the taxpayer's position in the appeal is frivolous or groundless.

**CREDIT(S)**

(Aug. 16, 1954, c. 736, 68A Stat. 890; Pub.L. 89-713, § 3(c), Nov. 2, 1966, 80 Stat. 1109; Pub.L. 91-172, Title IX, § 960(h) (2), Dec. 30, 1969, 83 Stat. 735; Pub.L. 93-406, Title II, § 1041(b)(3), Sept. 2, 1974, 88 Stat. 950; Pub.L. 94-455, Title X, § 1042(d)(2)(A), (B), Title XIII, § 1306(b)(4), (5), Title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1638, 1639, 1719, 1834; Pub.L. 95-600, Title III, § 336(c)(1), Nov. 6, 1978, 92 Stat. 2842; Pub.L. 97-164, Title I, § 154, Apr. 2, 1982, 96 Stat. 47; Pub.L. 97-248, Title IV, § 402(c)(15), Sept. 3, 1982, 96 Stat. 668; Pub.L. 98-369, Div. A, Title I, § 131(e)(2)(A), July 18, 1984, 98 Stat. 665; Pub.L. 99-514, Title XV, § 1558(a), (b), Title XVIII, §§ 1810(g)(2), 1899A(60), Oct. 22, 1986, 100 Stat. 2757, 2758, 2828, 2962; Pub.L. 100-647, Title VI, § 6243(b), Nov. 10, 1988, 102 Stat. 3750; Pub.L. 101-239, Title VII, § 7731(b), Dec. 19, 1989, 103 Stat. 2401; Pub.L. 105-34, Title XII, §§ 1222(b)(3), 1239(d), Aug. 5, 1997, 111 Stat. 1019, 1028; Pub.L. 114-74, Title XI, § 1101(f)(13), Nov. 2, 2015, 129 Stat. 638; Pub.L. 114-113, Div. Q, Title IV, § 423(a), Dec. 18, 2015, 129 Stat. 3123.)

26 U.S.C.A. § 7482, 26 USCA § 7482

Current through P.L. 116-169.

United States Code Annotated

Title 26. Internal Revenue Code (Refs & Annos)

    Subtitle F. Procedure and Administration (Refs & Annos)

        Chapter 75. Crimes, Other Offenses, and Forfeitures

            Subchapter A. Crimes

                Part I. General Provisions (Refs & Annos)

26 U.S.C.A. § 7206, I.R.C. §7206

### § 7206. Fraud and false statements

#### Currentness

Any person who--

**(1) Declaration under penalties of perjury.**--Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

**(2) Aid or assistance.**--Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

**(3) Fraudulent bonds, permits, and entries.**--Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

**(4) Removal or concealment with intent to defraud.**--Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

**(5) Compromises and closing agreements.**--In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully--

**(A) Concealment of property.**--Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

**(B) Withholding, falsifying, and destroying records.**--Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

#### **CREDIT(S)**

(Aug. 16, 1954, c. 736, 68A Stat. 852; Pub.L. 97-248, Title III, § 329(c), Sept. 3, 1982, 96 Stat. 618.)

26 U.S.C.A. § 7206, 26 USCA § 7206

Current through P.L. 116-169.

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