

24-455

ORIGINAL

No. 23-

In the Supreme Court of the United States

Nnabugwu Eze

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent

FILED
MAR 02 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

Nnabugwu C. Eze, pro se 1213 Liberty Rd. Suite J
#218

Eldersburg, MD 21784

Tel.: 443-316-1334

Fax: 443-316-1334

E-Mail: nbe_5@yahoo.com

QUESTIONS PRESENTED

1. Whether the Court erred in not dismissing the case for lack of jurisdiction on the ground that no notice of deficiency was issued to petitioner within 90 days of the date of the tax court petition, and no notice of determination was issued to petitioner within 30 days of the date of the tax court petition that would permit petitioner to invoke the Tax Court's jurisdiction, as mandated by 26 U.S.C. § 6213(a), invalidating the notice of deficiency for tax years 2015 and 2016 and affecting the Court's jurisdiction.
2. Whether the court failed to apply the Cohen rule appropriately concerning the estimation of business expenses when exact substantiation is unavailable, thereby

potentially misinterpreting the statutory mandate for Tax Court decision reviews as outlined in 26 U.S.C. § 7482(a) and deviating from established legal precedent that recognizes the practical limitations on petitioner's record-keeping.

**PARTIES TO THE PROCEEDINGS AND
RELATED PROCEEDINGS**

The parties to the proceeding below are as follows:

Petitioner is Nnabugwu Eze. He was the petitioner in the United States Tax Court and appellant in the court of appeals.

The related proceedings below are:

1. Eze v Commissioner of Internal Revenue, No. 21425-19 (U.S. Tax Court) – Judgment entered August 4, 2022; and

2. Eze v Commissioner of Internal Revenue, No.
23-1062 (4th Cir.) – Judgment entered October
23, 2023.

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PETITION FOR WRIT OF CERTIORARI

Nnabugwu Eze, Petitioner, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion and the judgement of the Tax Court is reported at Eze v. Commissioner of Internal Revenue, No. 21425-19 (U.S.T.C. Oct. 12, 2022; Nov. 3, 2022). The decision of the United States Court of Appeals for the Fourth Circuit, which affirmed the Tax Court's decision, is unpublished and listed under docket number 23-1062, decided on October 23, 2023.

JURISDICTION

The United States Tax Court issued its final order and judgment in this matter on August 4, 2022, under docket number 21425-19 in the case of Nnabugwu C. Eze v. Commissioner of Internal Revenue. The petitioner filed a timely motion to vacate or revise the decision pursuant to Tax Court Rule 162 on October 18, 2022, which was denied by the Tax Court on November 3, 2022. The petitioner then filed a timely notice of appeal on January 10, 2023, in accordance with Tax Court Rule 190 and Federal Rule of Appellate Procedure 13(a). The appeal was docketed in the United States Court of Appeals for the Fourth Circuit as case number 23-1062. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- I. The Internal Revenue Code (26 U.S.C.) 6212,**
which authorizes the Internal Revenue Service
to send a notice of deficiency to a taxpayer.
- II. The Internal Revenue Code (26 U.S.C.) §**
6213(a), which provides the tax- payer with a
90-day period to file a petition with the Tax
Court after a deficiency notice is issued and
prohibits the assessment of a deficiency until
this period expires or the Tax Court has
rendered a decision.
- III. The Internal Revenue Code (26 U.S.C.) §**
7482(a), which gives the Court of Appeals
jurisdiction to review the decisions of the Tax
Court in the same manner and to the same

extent as decisions of the district courts in civil actions tried without a jury.

IV. The Cohan rule, 39 F.2d 540 (2d Cir. 1930), which allows the Tax Court to estimate expenses when there is no adequate record but there is evidence that deductible expenses were incurred.

STATEMENT OF THE CASE

This petition arises from decisions rendered by the United States Tax Court and affirmed by the Fourth Circuit Court of Appeals concerning petitioner Nnabugwu C. Eze's federal income tax liabilities for the years 2015 and 2016. The issue at hand originated with a notice of deficiency issued by the Commissioner of the Internal Revenue Service (IRS),

which cited various adjustments and determined significant deficiencies amounting to \$39,241 and \$45,735 for the respective years.

The petitioner's initial foray into financial and real estate ventures began after acquiring a rental property in 1996, following graduation from Rutgers University. His subsequent professional path led him to become an IT contractor with National Computer Services Consultants (NCSC). During this period, the petitioner also engaged in residential rehabilitation, which intertwined with his IT consultancy work. The Tax Court, however, in its T.C. Memo 2022-83, took issue with the credibility of the petitioner's claims regarding his business expenses and activities, ultimately ruling in favor of the IRS.

Central to the petitioner's defense was the application of the Cohan rule, which allows for the estimation of expenses when exact evidence is unavailable. The Tax Court's apparent disregard for the petitioner's detailed accounts of his business operations, particularly his IT and real estate rehabilitation activities, is a focal point of contention. Furthermore, the Court's decision questioned the plausibility of using cash transactions for business expenses, despite acknowledging the legitimacy of the receipts presented. The Tax Court's findings were further complicated by the petitioner's pro se status and the denial of a final continuance requested for the presentation of witness testimony. These witnesses were expected to substantiate the petitioner's character, business dealings, and the nature of his expenses. The denial, as argued,

prejudiced the petitioner's ability to fully present his case.

The application of the Cohan rule, named after George M. Cohan, whose case with the Commissioner of Internal Revenue established the precedent, comes into sharp focus in this petition. In the aforementioned case, Cohan faced challenges with the IRS over the deductibility of business expenses when precise documentation was not kept. The Second Circuit Court of Appeals in Cohan v. Commissioner of Internal Revenue, 39 F.2d 540 (2d Cir. 1930) ultimately decided that when a tax-payer can demonstrate that qualified expenses were indeed incurred but is unable to substantiate the exact amounts, the tax board should make a "close approximation" and not refuse deduction entirely.

thereby improperly denying deductions for legitimate business expenses. The Tax Court, while acknowledging the petitioner's expenditures, refused any deductions on the grounds of inadequate substantiation. This principle is key to the petitioner's argument that the Tax Court and the appeals court failed to apply this rule justly.

The procedural integrity of the tax assessment process is a cornerstone of fair taxation. The Petitioner's case brings into focus the fundamental requirement of a proper notice of deficiency as a precondition to the Tax Court's jurisdiction. Under 26 U.S.C. § 6212, the Internal Revenue Service (IRS) is obligated to issue a notice of deficiency to the taxpayer before proceeding with the assessment of additional tax. The Tax Court's authority to adjudicate is contingent upon the issuance of this

statutory notice. In the case at hand, the Petitioner asserts that for the tax years 2015 and 2016, the IRS failed to issue a notice of deficiency within the statutory period, thereby failing to activate the Tax Court's jurisdiction for those years. The absence of this critical procedural step challenges the very foundation of the Tax Court's subsequent determinations and the IRS's assessments.

On the substantive side, the Petitioner, Mr. Nnabugwu Eze, who is both an IT contractor and a real estate investor, contends that the Tax Court did not properly evaluate the complexities of his dual business endeavors. As a self-represented litigant, Mr. Eze provided extensive testimony and evidence to substantiate his business expenditures, yet the Tax Court discounted this evidence. The Cohan rule allows for the estimation of expenses when a

taxpayer can prove that eligible expenses were incurred but is unable to substantiate the exact amounts. Mr. Eze argues that the Tax Court's decision overlooks this doctrine, thereby failing to acknowledge the legitimacy of his documented expenses tied to property rehabilitation projects.

The Tax Court questioned the credibility of the Petitioner and the veracity of his claimed deductions. The petitioner asserts that the Tax Court's ruling and subsequent appellate affirmation failed to acknowledge the full context of his business endeavors and the evidentiary support he provided. The Tax Court's finding hinges on the presumption that the petitioner's business practices, and record-keeping did not comport with the Tax Court's conceptualization of what a legitimate IT and

construction business should be, leading to the conclusion that his business expenses were unsubstantiated, and his testimony lacked credibility. This was despite the acceptance of cash receipts from recognized suppliers like Lowe's, Home Depot, and 84 Lumber as authentic, albeit questioning the plausibility of large cash transactions despite their validation by the court. The records presented, including receipts and contractual agreements, should have been deemed sufficient to meet his burden of proof, especially when considered in light of the Cohan rule. The Tax Court's rigid application of business categorizations, distinguishing between "construction business" and "IT business" did not account for the integrative nature of Mr. Eze's professional activities, which encompassed both sectors.

The assertion that the petitioner's reported expenses for construction activities far exceeded his income was contested by the petitioner. According to the Tax Court's own admission, they could not ascertain the "actual scope and scale" of the petitioner's construction business but paradoxically allocated gross receipts of \$20,355 and \$27,875.

The petitioner seeks a review of these critical legal and procedural issues by the Supreme Court, which are not only central to his case but also of significant importance to the administration of justice in tax law. The questions presented herein merit the Court's attention to ensure that procedural due process is upheld, particularly in the context of tax assessments and the fundamental rights of taxpayers.

The procedural requirements for the notice of deficiency are not mere formalities but essential legal prerequisites to the exercise of the Tax Court's jurisdiction. The failure to issue a timely notice of deficiency to the petitioner for the tax years 2015 and 2016 is a significant procedural lapse that warrants the Supreme Court's review. The integrity of the judicial process and the fair application of tax laws depend on adherence to these statutory requirements.

Moreover, the petitioner's substantive tax issues, including the Tax Court's handling of the Cohan rule and the allowance of estimated expenses when precise documentation is not available, raise substantial legal questions that are appropriate for the Supreme Court's consideration. The Cohan rule allows for the estimation of expenses to ensure that

taxpayers are not unduly penalized for the inability to produce exact documentation under certain circumstances. The Tax Court's rigid approach to the petitioner's claimed business expense deductions, without proper regard for the application of the Cohan rule, presents a significant question of law regarding the interpretation and application of this rule.

The petitioner requests the Supreme Court grant this Petition for Writ of Certiorari to review the legal and procedural issues outlined herein, and to provide clarity and guidance on the proper application of the notice requirements and the Cohan rule. Such guidance is essential to ensure the fair and consistent application of the tax laws and to maintain the integrity of the judicial system.

REASONS FOR GRANTING THE WRIT

The application of the Cohan rule in the context of complex business activities and the procedural requirements for jurisdiction based on the issuance of a notice of deficiency are significant issues that affect not only the Petitioner but also the fair enforcement of tax laws across the nation.

The Tax Court's decision, as well as the appellate court's affirmation, reflects a fundamental misinterpretation of the Cohan rule that conflicts with its intended purpose to provide relief to taxpayers who, despite lacking exact records, can demonstrate that deductible expenses were incurred.

The decision also stands in contrast to other jurisdictions where the Cohan rule has been applied

more leniently, indicating a need for a uniform standard.

The procedural anomaly in the issuance of a notice of deficiency in the Petitioner's case raises a significant legal question regarding the jurisdiction of the Tax Court. This Court's intervention is necessary to clarify the IRS's obligations and the procedural safeguards for taxpayers, ensuring that the issuance of a notice of deficiency adheres to statutory requirements.

The absence of the notice of deficiency issued to petitioner within 90 days of the date of the petition, and no notice of determination was issued to petitioner within 30-days of the petition for the tax years 2015 and 2016 is a procedural defect that may invalidate the notice of deficiency and thus the

jurisdiction of the Tax Court. This procedural question has not been addressed in the appellate proceedings and presents a unique opportunity for this Court to establish a clear precedent.

The Petitioner's situation exemplifies the substantial federal questions involved in the correct application of tax laws and procedural due process. The legal principles at stake are significant and the need for clarity and consistency in the law is paramount.

CONCLUSION

The Petitioner submits that the questions presented are of such importance that they require the authoritative adjudication of this Honorable Court. Therefore, a grant of certiorari is not only justified but imperative to ensure consistent application of the

tax laws and uphold the procedural rights of
taxpayers.

Respectfully submitted,

Nnabugwu C. Eze, pro se 1213 Liberty Rd. Suite J
#218

Eldersburg, MD 21784

Tel.: 443-316-1334

Fax: 443-316-1334

E-Mail: nbe_5@yahoo.com

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