T.C. Summary Opinion 1999-47

UNITED STATES TAX COURT

DAVID L. AND LINDA M. PAIG, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 13704-97S. Filed March 16, 1999.

Jason Silver, for respondent.

NAMEROFF, Special Trial Judge: This case was heard pursuant to the provisions of section 7463.[1] The decision to be entered is not reviewable by any other court, and this opinion should not be cited as authority.

By notice of deficiency dated April 1, 1997, respondent determined a deficiency in petitioners' 1993 Federal income tax in the amount of $7,564 and a penalty under section 6663(a) in the amount of $2,379. Respondent filed an answer to the petition making affirmative allegations of fact in support of his burden

[1] All section references are to the Internal Revenue Code in effect for the year at issue. All Rule references are to the Tax Court Rules of Practice and Procedure.

On July 21, 1998, respondent filed with the Court and served petitioners with a request for admissions. Petitioners did not file any response thereto, and pursuant to Rule 90(c), respondent's requests for admissions were deemed admitted. Based upon those deemed admissions, we find the following facts:

During tax year 1993, petitioner Linda M. Paig (Mrs. Paig) was a Revenue Officer with the Internal Revenue Service. Mrs. Paig is familiar with the provisions of the Internal Revenue Code. Mrs. Paig prepared petitioners' 1993 income tax return. Petitioner David L. Paig (Mr. Paig) has a doctorate degree in psychology. In 1993, Mr. Paig had operated several businesses and had some familiarity with the provisions of the Internal Revenue Code.

On March 9, 1993, Mr. Paig and petitioners' daughter Skye Paig were injured in an automobile accident (the accident) with a vehicle driven by Gerald Robinson (Mr. Robinson). Mr. Paig and Skye Paig were transported by ambulance to the Garden Grove Hospital emergency room after the accident. Mr. Paig's 1982 "Chevy" van suffered damage as a result of the accident and was out of service for more than 2 months.

Mr. Robinson's automobile was insured with State Farm Insurance Co. (State Farm). Subsequent to the accident, Mr. Paig and Skye Paig hired Kirk McIntosh as their attorney to represent them with regard to claims they might have as a result of the accident. State Farm paid Mr. Paig and Skye Paig the following amounts as a result of the accident:

The other Schedule C, reflecting Mr. Paig's activity as a clinical psychologist, reflected the following deductions and respondent's adjustments thereto in the notice of deficiency:

Item	Claimed	Disallowed
Car and truck	$2,653	$2,405
Depreciation	5,931	5,931
Insurance	1,907	1,599
Rent or lease	1,500	1,500
Office expense	1,732	1,075
Other	829	200

Mrs. Paig was aware in 1993 that the Internal Revenue Code allowed a deduction for a Schedule C business for either actual automobile expenses incurred in connection with its business or the standard mileage rate multiplied by the number of business miles driven, but not both. On both Schedules C for Mr. Paig's businesses, petitioners claimed both actual automobile expenses and mileage. On the Schedule C for Topper Hardware, petitioners claimed a deduction for automobile repairs which had been paid for by State Farm.

Mrs. Paig told respondent's examiner that an automobile was rented in 1993 because petitioners' van was being worked on. Mrs. Paig told respondent's examiner that the van was being fixed in 1993 so that Mr. Paig could use the van more easily for the Topper Hardware business. Mrs. Paig told respondent's examiner that the van's seats were being removed in 1993 to increase the room inside the van. Respondent's examiner asked Mrs. Paig whether the van was in an accident in 1993, and Mrs. Paig replied that the van was not in an accident in 1993. Respondent's

charging her with two counts of Making False Statements in violation of 18 U.S.C. sec. 1001.[2]

Discussion

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. See Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." Rule 121(b); see Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), affd. 17 F.3d 965 (7th Cir. 1994); Zaentz v. Commissioner, 90 T.C. 753, 754 (1988); Naftel v. Commissioner, 85 T.C. 527, 529 (1985). The moving party bears the burden of proving that there is no genuine issue of material fact, and factual inferences will be read in a manner most favorable to the party opposing summary judgment. See Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982).

The Court finds that petitioners have clearly indicated that they no longer wish to contest any issue involved in this case.

---

[2] On Jan. 26, 1999, respondent filed a Motion to Supplement the Motion for Summary Judgment which we have granted. Facts with regard to the plea agreement were established in the exhibits attached to that motion.

respondent alleged that the fraudulent deductions were $3,847.76 for rent and $2,933.75 for repairs. These amounts are the amounts paid to petitioners by State Farm for repairs to the van and for rental of substitute vehicles necessitated by the accident.

Fraud is a question of fact to be resolved upon consideration of the entire record and is never presumed. See Estate of Pittard v. Commissioner, 69 T.C. 391, 400 (1977). Respondent's burden of proving fraud can be met by facts deemed admitted pursuant to Rule 90(c). See Marshall v. Commissioner, 85 T.C. 267, 272-273 (1985); see also Doncaster v. Commissioner, 77 T.C. 334 (1981). We hold that the facts deemed admitted pursuant to Rule 90(c) satisfy respondent's burden of proving fraud as to Mrs. Paig, but not as to Mr. Paig.

Mrs. Paig, an employee of the Internal Revenue Service and knowledgeable of the provisions of the Internal Revenue Code, prepared petitioners' 1993 Federal income tax return and claimed deductions for car rental and repairs which she knew had been reimbursed to them by State Farm as a result of the accident.[3] When queried by respondent's examining agent, Mrs. Paig falsely denied that there had been any reimbursements as the result of any accident. Subsequently, she entered into a plea agreement acknowledging her criminal guilt with regard to these false

---

[3] Our findings of fact as to the double deductions for actual costs and mileage have not been considered in connection with the fraud penalty.

It is a fact deemed admitted that Mrs. Paig claimed deductions for the business use of Mr. Paig's vehicles[5] using both the actual cost method and the mileage method. Inasmuch as respondent did not disallow the "car and truck" expense claimed on the Topper Hardware Schedule C, it is likely that the disallowed deductions included the expenses claimed by the actual expense method. However, we are unable to tell from this record to what extent that it is an accurate statement. Therefore, we are unable to determine the part of the understatement which might be due to the negligence of petitioners. Accordingly, we cannot sustain respondent's alternate position.

Reviewed and adopted as the report of the Small Tax Case Division.

In order to reflect our conclusions herein,

An order will be issued granting in part respondent's motion for summary judgment, and decision will be entered under Rule 155.

---

[5] In addition to the Chevy van, the depreciation schedule reflects depreciation claimed on the psychology Schedule C with respect to a second undescribed vehicle.