

A Defective Tax Court Petition Can Still Toll the Assessment Statute of Limitations.

Under Section 6501(a) of the Internal Revenue Code, the IRS generally has three years to assess additional taxes after a return is filed. There are a number of exceptions, however, including when “a proceeding in respect of the deficiency is placed on the docket of the Tax Court,” in which case the statutory period is tolled “until the decision of the Tax Court becomes final” plus sixty days. I.R.C. § 6503(a)(1).

What if the petition that is filed is defective due to lack of jurisdiction? The Eleventh Circuit recently addressed this issue in *Shockley v. Commissioner*, 2012 U.S. App. LEXIS 14200 (11th Cir. July 11, 2012), ruling that even a jurisdictionally defective petition tolls the assessment statute of limitations.

Mr. and Mrs. Shockley and a related limited partnership had been shareholders in Shockley Communications Corporation, and the Shockleys had been officers. They sold all of their shares to an unaffiliated corporation, which then filed a short year tax return for Shockley Communications covering the period ending May 31, 2001, the date when the transaction closed. That return was selected for audit, and in 2005, the IRS would send two notices of deficiency: one was sent to the new owner of Shockley Communications, while a second notice was addressed to Shockley Communications and Mr. and Mrs. Shockley at their home address. *Shockley v. Commissioner*, 2012 U.S. App. LEXIS 14200 at *4-*7.

The Shockleys responded by filing a petition with the Tax Court captioned in the same fashion as the notice of deficiency; the petition alleged that the notice of deficiency was invalid as to Shockley Communications because it was not sent to its last known address, and that it improperly named Mr. and Mrs. Shockley. *Id.* at 7-8. The Shockleys then filed a motion to dismiss the petition for lack of jurisdiction in 2007, which the Tax Court granted. *Id.* at 9-10.

In September 2007, the IRS issued an assessment to Shockley Communications; it also sent a notice of transferee liability to the Shockleys and their limited partnership in 2008. The Shockleys and their limited partnership petitioned the Tax Court to redetermine their transferee liability, and then moved to dismiss arguing that the assessment of Shockley Communications was untimely and that the time to assess them with transferee liability had also expired. The timeliness of the determination of transferee liability therefore turned upon the impact of the earlier petition that the Tax Court had dismissed.

The Tax Court concluded that the prior petition was essentially a nullity: it first noted that the notice of deficiency that had been sent to the Shockleys was invalid and that the 2005 petition was not filed on behalf of Shockley Communications; on this basis, the Tax Court concluded that the 2005 petition did not prohibit an assessment against Shockley Communications and therefore did not toll the assessment statute of limitations. *Id.* at *13-*14.

The IRS appealed the Tax Court’s ruling in favor of the Shockleys and their limited partnership. On appeal, the Eleventh Circuit focused upon the language of Section 6503(a)(1), specifically on what constituted a “proceeding in respect of the deficiency.” 2012 U.S. App. LEXIS 14200 at *17. Ultimately, the Court of Appeals concluded that the petition filed by the Shockleys in response to the defective notice of deficiency was a “proceeding in respect of the deficiency” that tolled the statute of limitations.

The Court emphasized several factors in reaching this conclusion. The Eleventh Circuit began its analysis by invoking the plain meaning rule, and it also invoked the principle that statutes of limitations restricting assessment or collection of taxes are to be construed in the government's favor. *Id.* at *18. The Court then noted that the language of Section 6503(a) did not require that the petition seek a redetermination of the deficiency; Congress used broader language that required only a proceeding "in respect of" a deficiency. *Id.* at *19. The Eleventh Circuit also found a useful contrast between the language used in Section 6503(a), which merely focuses on a "proceeding," and the language of Section 6213(a), which restricts the ability of the IRS to make an assessment when a "taxpayer" files a petition for a "redetermination of a deficiency." *Id.* at *20. Given the fact that the 2005 petition was filed by the Shockleys in response to a notice that described a corporate tax deficiency, the Eleventh Circuit concluded that the petition was "in respect of" that deficiency, triggering tolling.

How broad is the scope of this decision? The Eleventh Circuit opinion indicates that it is likely to be read broadly, as it suggests that if the Shockleys had simply filed a petition that contested any assessment of corporate liability against them, that petition would also be "in respect of" the corporate deficiency, triggering tolling. *Id.* *28-*29.

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