

## **Tax Court Jurisdiction Reaches A Dispute Over Foreign Tax Credits.**

U.S. taxpayers receive a credit for foreign taxes under Section 903 of the Internal Revenue Code. If the taxpayer subsequently receives a refund of foreign taxes, under Section 905, she is supposed to notify the IRS, which will then adjust the tax determination. The resulting adjusted tax is then payable on notice and demand. I.R.C. § 905(c)(1), (3). This means that the normal deficiency procedure is bypassed.

On Monday, the Tax Court issued an interesting opinion dealing with its jurisdiction over a disputed adjustment to foreign tax credits. *Sotiropoulos v. Comm’r*, 2014 U.S. Tax Ct. LEXIS 16 (May 5, 2014). Here, the taxpayer was employed in London and her employer withheld taxes from her pay. She then claimed a credit on her U.S. return. Ms. Sotiropoulos, however, also applied for refunds of her U.K. taxes. 2014 U.S. Tax Ct. LEXIS 16, slip op. at \*3. While she received payments from the United Kingdom, the taxpayer contended that the payments were not refunds within the ambit of Section 905(c)(1) because her entitlement was still under investigation in the United Kingdom and due to provisions of the tax treaty between the two countries. *Id.*, slip op. at \*4. As a consequence, she did not amend her U.S. returns.

On audit, the IRS learned that Ms. Sotiropoulos had applied for refunds and received payments from the U.K. taxing authorities. The IRS determined that she had received refunds of several hundred thousand dollars. *Id.*, slip op. at \*4-\*5. Instead of simply collecting by means of notice and demand under Section 905(c)(3), the IRS issued a notice of deficiency. When Ms. Sotiropoulos filed a petition with the Tax Court, however, the government moved to dismiss, asserting that the court lacked jurisdiction, despite the issuance of the notice of deficiency.

In addressing this jurisdictional challenge, the Court began by noting that its jurisdiction has been given a “broad, practical construction rather than a narrow, technical one.” *Id.*, slip op. at \*6 (citations omitted). Ultimately, the court was persuaded that it had jurisdiction sufficient to determine whether the case involved a foreign tax redetermination under Section 905(c)(1). *Id.*, slip op. at \*13-\*20. This conclusion rested on three key considerations:

- the fact that the taxpayer disputed the government’s contention that she had received refunds that fell within the scope of Section 905(c)(1) of the Code;
- the court’s role to provide a prepayment forum for taxpayers; and
- the fact that a court always has jurisdiction to determine whether it has jurisdiction over a particular case.

Consequently, the Tax Court denied the motion to dismiss, concluding that it certainly had jurisdiction to determine whether the payments at issue were actually refunds that would trigger the Section 905(c)(3) notice and demand regimen and divest the court of jurisdiction.

The broader lesson: in jurisdictional disputes before the Tax Court, close calls go to the taxpayer.

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