IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

AMANDA N. VU,	)	
	)	
Petitioner-Appellant	)	
	)	
v.	)	**No. 17-9007**
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent-Appellee	)	

APPELLEE'S MEMORANDUM CONCERNING APPELLATE JURISDICTION

On October 26, 2017, this Court ordered appellant Amanda Vu to file a response addressing the Court's jurisdiction over her appeal. Appellant, on November 15, 2017, filed her response to the Court's order. On November 16, 2017, this Court ordered the appellee to file a memorandum addressing the jurisdictional issue concerning I.R.C. § 7463 outlined in this Court's October 26, 2017 order and appellant's response thereto. The Commissioner of Internal Revenue, appellee herein, by and through his counsel, respectfully submits this memorandum addressing this Court's appellate jurisdiction.

STATEMENT

Amanda Vu (taxpayer) and her husband filed a joint income tax return for 2011. Taxpayer, on March 24, 2014, filed a Form 8857 (Request for Innocent Spouse Relief) requesting relief from the unpaid income tax liability for that year under the so-called "innocent spouse" provisions of I.R.C. § 6015. (*See* Doc. 13 at 14.) In response, on June 12, 2014, the IRS mailed taxpayer an examination report and an Innocent Spouse Lead Sheet (Workpaper # 615, dated June 4, 2014) explaining that it intended to deny her request for innocent-spouse relief. (Doc. 34, Ex. A.)[1] The June 12, 2014 letter informed taxpayer that if she did not agree with the proposed changes, she could request a conference with the IRS. (*Id*. at 1.) The letter further informed taxpayer that if she did not agree after that conference, she could request a conference with the IRS Appeals Office. (*Id*. at 2.) The letter also explained that if taxpayer did not reach an agreement with the Appeals Office or did not respond to this letter, the IRS would send her

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[1] The IRS denied the requested innocent-spouse relief because it determined that (i) the primary source of the unreported income was taxpayer's nail salon, (ii) she was actively involved in the business for years prior and subsequent to the tax year at issue, and (iii) she had a college education. (Doc. 34, Ex. A, Workpaper # 615.)

another letter to tell her how to obtain Tax Court review of her case. (*Id.*)

On September 12, 2014, taxpayer filed a petition with the Tax Court requesting that she be granted relief under I.R.C. § 6015. (Doc. 1.) Taxpayer attached to her petition a copy of the June 4, 2014 Innocent Spouse Lead Sheet. (Doc. 1, Ex. A.) In her petition, taxpayer checked the box electing to have her case conducted under "small tax case" procedures instead of regular tax case procedures. (Doc. 1 at 1; *see* I.R.C. § 7463.) The following language appears beneath the election: "NOTE: A decision in a 'small tax case' cannot be appealed to a Court of Appeals by the taxpayer or the IRS." Pursuant to taxpayer's election, the case was docketed at No. 21661-14S, with the "S" at the end of the docket number indicating that it was a small tax case. (*Id.*)

On November 3, 2014, the Commissioner filed an answer praying that the relief sought by taxpayer be denied. (Doc. 3.) The Commissioner attached to the answer a copy of a notice of determination, dated October 9, 2014, determining that taxpayer is not entitled to innocent-spouse relief for 2011. (Doc. 3, Ex. A.) The determination stated that if taxpayer "disagree[s]" with the

Commissioner's decision, she "can contest [the] determination" "by filing a petition with the" Tax Court but "must" do so "within 90 days from the date of" the determination. (Doc. 3, Ex. A. at 3.) Because the determination was dated October 9, 2014, the last day to file a petition was January 7, 2015.

The Commissioner, on January 27, 2015, filed a motion to dismiss the case for lack of jurisdiction, arguing that taxpayer's petition was not timely filed within the prescribed periods of I.R.C. § 6015(e)(1)(A). (Doc. 6.) On June 1, 2015, the Tax Court (Judge Tamara Ashford) held a hearing on the motion to dismiss. (Doc. 9.) Taxpayer and counsel for the Commissioner both appeared at the hearing. (*Id.*)[2]

After the hearing, on November 8, 2016, the Tax Court issued a summary opinion granting the Commissioner's motion and dismissing

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[2] Counsel for the Commissioner explained to the Tax Court that the motion to dismiss was filed at the end of January 2015 because prior to that time counsel was requesting files and information from IRS employees in order to determine whether a notice of determination had been mailed to taxpayer prior to the filing of her Tax Court petition in September 2014. Counsel stated that the Commissioner did not delay filing the motion to dismiss, but rather, it was not until late January 2015 that it was determined that the October 9, 2014 notice of determination was the only notice of determination that was mailed to taxpayer. (Doc. 11 at 54-55.)

the case. (Doc. 13.) The Tax Court first noted that this "case was heard pursuant to the provisions of section 7463 of the Internal Revenue Code in effect when the petition was filed. Pursuant to section 7463(b), the decision to be entered is not reviewable by any other Court, and this opinion shall not be treated as precedent for any other case." (*Id*. at 1-2 (footnote omitted).) The court stated that I.R.C. § 6015(e) vests the court with jurisdiction to review actions for determination of relief from joint and several liability under I.R.C. § 6015, and that there are two possible times within which a taxpayer can petition the Tax Court. (*Id*. at 8-9.) The court noted that the Tax Court shall have jurisdiction if the taxpayer files a petition "(1) within 90 days of the Commissioner's mailing of a notice of his final determination of relief to the taxpayer, or (2) if the Commissioner has not yet mailed such a notice, at any point after six months has transpired since the taxpayer's request for relief was 'filed' or 'made' with the Commissioner." (*Id*. at 9.) The court found that taxpayer's request for innocent-spouse relief was filed on March 24, 2014. (*Id*. at 14-15.) The court held that it could "exercise jurisdiction over the petition only if it was filed 'at any time after the earlier of ' October 9, 2014, or September 25, 2014, see sec. 6015(e)(1)(A)(i), and

'not later than' January 7, 2015, see sec. 6015(e)(1)(A)(ii)." (*Id.* at 15.) Because the petition, filed on September 12, 2014, did not meet these requirements, the court held that it lacked jurisdiction over it. (*Id.*) Consistent with its summary opinion, the court issued an order of dismissal for lack of jurisdiction on November 10, 2016. (Doc. 14.)

Approximately three weeks later, Carlton M. Smith, Esquire, and T. Keith Fogg, Esquire, entered their appearance on behalf of taxpayer. (Docs. 15, 16.) Thereafter taxpayer filed motions for reconsideration, to vacate, and to remove the small tax case designation. (Docs. 17, 18, 19.)

On July 25, 2017, the Tax Court denied taxpayers' motions. (Doc. 35.) The court noted that taxpayer's motions for reconsideration and to vacate were based on the argument that the periods prescribed by I.R.C. § 6015(e)(1)(A) for filing a petition for review of a notice of determination regarding innocent-spouse relief are not jurisdictional but are merely waivable claim-processing rules. Citing precedent from the Tax Court and Courts of Appeals, the Tax Court here held that the periods prescribed in I.R.C. § 6015(e)(1)(A) are jurisdictional. (*Id.* at 4-5.) Accordingly, the court denied her motions, holding that taxpayer "has not shown any unusual circumstances or substantial error that

warrants granting her motions for reconsideration and to vacate." (*Id.* at 5.)

Turning to the motion to remove the small tax case designation, the court, citing I.R.C. § 7463(d), noted that the court, on "its own motion or on the motion of a party to the case" "may . . . issue an order directing that the small tax case designation be removed." (Doc. 35 at 5.) Noting that discontinuation of proceedings as a small tax case would be proper only where "there are reasonable grounds for believing that the amount" at issue exceeds $50,000 (I.R.C. § 7463(d)), the court stated that "[t]here are no reasonable grounds for believing that the amount of the underlying liability in this case exceeds $50,000." (Doc. 35 at 5, n.3.) In denying taxpayer's motion to remove the small tax case designation, the court further noted that the motion "was not filed until some three weeks after the summary opinion was issued and the order of dismissal for lack of jurisdiction was entered, which, in the Court's view, violates the spirit of the Court's small tax case rules." (Doc. 35 at 6.)

On September 11, 2017, taxpayer filed a notice of appeal to this Court. (Doc. 36.) *See* I.R.C. § 7483; Fed. R. App. P. 13(a)(1).

DISCUSSION

A. Pursuant to I.R.C. § 7463(b), this Court lacks jurisdiction over taxpayer's appeal

1. As in effect with respect to the year in suit, I.R.C. § 7463(a) provides, in pertinent part, that, "[i]n the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment," exceeds $50,000 for any one taxable year in the case of a tax under Subtitle A, *i.e.*, the income tax subtitle of the Code–

> at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453 [relating to the Tax Court rules], such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) [relating to reports and decisions] and 7460 [relating to hearings, determinations and reports by divisions of the court].

Pursuant to I.R.C. § 7463(f)(1), this small tax case procedure also applies, at the option of the taxpayer, to a petition for innocent-spouse relief under I.R.C. § 6015(e) "in which the amount of relief sought does

not exceed $50,000." Regarding the finality of small tax case decisions, I.R.C. § 7463(b) provides that "[a] decision entered in any case in which the proceedings are conducted under this section *shall not be reviewed in any other court* and shall not be treated as a precedent for any other case." (Emphasis added.)

In enacting I.R.C. § 7463, Congress authorized an optional, informal procedure for "small tax cases" in the Tax Court. *See* Tax Court Rule 174. This procedure applies at the election of the taxpayer, who is free to go forward with a regular Tax Court proceeding if she wishes. Section 7463 was enacted as part of the Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 487, § 957, because Congress saw the "need for special procedures for handling small claims." S. Rep. No. 91-552, at 302 (1969), *reprinted in* 1969-3 C.B. 423, 614.

The report of the Senate Committee on Finance indicates that Congress was concerned that, even though the Tax Court procedures were less complicated than in other courts, they nevertheless remained formal. S. Rep. No. 91-552 at 302-304, *reprinted in* 1969-3 C.B. at 614-615. Congress also believed that the rules of evidence were a "difficult barrier to the taxpayer who represents himself." S. Rep. No. 91-552 at

302, *reprinted in* 1969-3 C.B. at 614. Consequently, I.R.C. § 7463 was adopted as a "simplified and relatively informal procedure . . . to be available to taxpayers." S. Rep. No. 91-552 at 303, *reprinted in* 1969-3 C.B. at 615. Decisions in such cases are to be based upon "a brief summary opinion instead of formal findings of fact, etc., would not be a precedent for future cases, and would not be reviewable on appeal." *Ibid.*

The Conference Report also indicates that Congress intended decisions in small tax cases to be non-reviewable. It states that the decision in a small tax case "is to be based upon a brief summary opinion instead of formal findings of fact, is not to be a precedent for future cases and is not to be reviewable upon appeal." H. Conf. Rep. No. 91-782, at 341 (1969), *reprinted in* 1969-3 C.B. 644, 682.

It is therefore clear from the legislative history that Congress intended I.R.C. § 7463 to provide a taxpayer who finds herself in a dispute with the IRS over a relatively small amount with an alternative forum where, with a minimum of formality, expense, and delay, she can present arguments to an expert and impartial judge. It is equally clear that Congress, in the interest of promoting "practical access" to the Tax

Court, determined that the decisions of the Tax Court in I.R.C. § 7463 proceedings should not be reviewable by appeal to any court. S. Rep. No. 91-552 at 303, *reprinted in* 1969-3 C.B. at 615; *see* I.R.C. § 7463(b).

2. The conclusion that decisions entered in small tax case proceedings under I.R.C. § 7463 are not appealable is further supported by I.R.C. § 7481. Section 7481(a) provides that "reviewable decisions" become final only after the time for filing a notice of appeal has expired without such a filing or after certain other procedural prerequisites have been satisfied. Section 7481(b) deals with "nonreviewable decisions" of the Tax Court, and provides that "[t]he decision of the Tax Court in a proceeding conducted under section 7463 shall become final upon the expiration of 90 days after the decision is entered."

Adhering to the plain language of I.R.C. § 7463, courts have repeatedly dismissed appeals from decisions entered in small tax case proceedings. *Dexter v. Commissioner*, 409 F.3d 877, 879 (7th Cir. 2005); *Cole v. Commissioner*, 958 F.2d 288, 289 (9th Cir. 1992); *Ballard v. Commissioner*, 639 F.2d 486 (9th Cir. 1980); *Kahle v. Commissioner*, 566 F.2d 581 (6th Cir. 1977). As the Ninth Circuit held in *Cole*, 958 F.2d at 290, "[t]here is no procedure by which a small tax case can

become a regular tax case by any means other than an express court order." *See Security Indus. Ins. Co. v. United States,* 830 F.2d 581, 584 (10th Cir. 1987) ("Small cases under § 7463, described in § 7481 as 'nonreviewable decisions,' cannot be directly reviewed or appealed.").

Although we have not located any reported appellate opinion considering whether a taxpayer who elects the small case procedures may obtain appellate review of a jurisdictional dismissal, four circuit courts have held, in unpublished opinions, that dismissals by the Tax Court on jurisdictional grounds were not reviewable under I.R.C. § 7463(b). *See Rayle v. Commissioner*, 594 Fed. Appx. 305 (7th Cir. 2014); *Edge v. Commissioner*, 552 Fed. Appx. 255 (4th Cir. 2014); *Parks v. Commissioner*, 201 Fed. Appx. 554 (9th Cir. 2006); *Rogers v. Commissioner*, 2001 WL 793703 (D.C. Cir. 2001). And there is no reason why the Tax Court's dismissal of a petition for lack of jurisdiction should render a decision entered in a small tax case appealable. As the Seventh Circuit explained in *Dexter*, 409 F.3d at 879, "[b]oth the statutory language and legislative history demonstrate that Congress intended to preclude judicial review of all 'decisions' in small tax cases." Just as in *Dexter*, this Court "may presume that

Congress knew of the Tax Court's ability to [dismiss a case for lack of jurisdiction] when it enacted the small tax case provisions and did not elect to create an exception to the bar on judicial review." 409 F.3d at 879. *See Rayle*, 594 Fed. Appx. at 307 (the "statutory language and the legislative history behind [I.R.C. § 7463(b)] 'demonstrate that Congress intended to preclude judicial review of all 'decisions' in small tax cases,'" including dismissal of a case for lack of jurisdiction) (*quoting Dexter*, 409 F.3d at 879).

Another provision of the Internal Revenue Code confirms that an order by the Tax Court dismissing a case for lack of jurisdiction is a "decision" that, if entered in a small tax case, may not be reviewed by any other court. Section 7459(c) of the Code provides the general rule that the date of a Tax Court decision is the date that an order specifying the amount of the deficiency is entered into the records of the Tax Court. But, if the Tax Court dismisses the case for lack of jurisdiction (in which event the order will not specify the amount of the deficiency), "the decision of the Tax Court shall be held to be rendered upon the date of" the entry of the dismissal. I.R.C. § 7459(c). There is no exception to this rule for small tax cases proceeding under I.R.C. § 7463.

Thus, if a small tax case is dismissed for lack of jurisdiction, then the order of dismissal is a "decision" that, under I.R.C. § 7463(b), is not subject to further review. *See Rayle*, 594 Fed. Appx. at 307.

In her petition, taxpayer checked the box to elect to have her case conducted under small tax case procedures instead of regular tax case procedures. (Doc. 1 at 1.) Below the election appears the language "[a] decision in a 'small tax case' cannot be appealed to a Court of Appeals by the taxpayer or the IRS." (Doc. 1 at 1.) As requested by taxpayer, the case was docketed as a small tax case, denoted by the "S" after the docket number. *See* Tax Court Rule 171; *Cole*, 958 F.2d at 290. Taxpayer therefore unequivocally exercised her option to have her case handled as a small tax case under I.R.C. § 7463, and the Tax Court honored her request.

3. Taxpayer points out in her response (at pp. 11-12) that courts have given a different treatment to I.R.C. § 7429, which also limits review of judicial determinations. Section 7429 provides for judicial review of "jeopardy" assessments and levies. Section 7429(f) limits appellate review of such determinations, providing: "Any determination made by a court under this section shall be final and conclusive and

shall not be reviewed by any other court." Noting that Section 7429(f) provides that only a "determination" made by a district court is unreviewable, and that Section 7429(b) defines a "determination" as a decision regarding the reasonableness of both the making and the amount of the disputed assessment, courts have held that a taxpayer affected by a jeopardy assessment or levy may obtain appellate review of a district court's judgment where no such determination was made, such as dismissals based on jurisdictional or procedural grounds. *E.g.*, *Abraitis v. United States*, 709 F.3d 641, 642 (6th Cir. 2013); *Wapnick v. United States*, 112 F.3d 74 (2d Cir. 1997); *Hiley v. United States*, 807 F.2d 623, 627-628 (7th Cir. 1986).

Taxpayer's reliance on cases interpreting the term "determination" in Section 7429 is misplaced. Section 7463(b) bars review of any "decision" entered in a case conducted under Section 7463, and Section 7459(c) provides that a Tax Court order dismissing a case for lack of jurisdiction is a "decision" of the court. Section 7463 is further distinguishable from Section 7429 because, pursuant to Section 7463, a taxpayer affirmatively elects to have her case conducted under the small tax case procedures, whereas under I.R.C. § 7429, the

IRS decides to make a jeopardy assessment or issue a jeopardy levy without taxpayer's consent and often without taxpayer's knowledge until after the completion of the assessment or levy.

B. The Tax Court's denial of a motion to remove the small tax case designation is not subject to appellate review, and, in any event, the Tax Court did not abuse its discretion in denying the motion to remove the small tax case designation

1. Approximately three weeks after the Tax Court issued the summary opinion and order of dismissal for lack of jurisdiction, taxpayer filed a motion to remove the small tax designation. (Doc. 18.) Section 7463(d) provides that "[a]t any time before a decision entered in a case in which the proceedings are conducted under this section becomes final, the taxpayer or the Secretary may request that further proceedings under this section in such case be discontinued." *See also* Tax Court Rule 171. Accordingly, taxpayer's motion to remove the small tax designation in this case was timely filed. *See* I.R.C. § 7481(b).

Removal of the small tax designation, however, is *discretionary* with the Tax Court. Section 7463(d) provides that the court "may" discontinue the case as a small tax case "if it finds that (1) there are reasonable grounds for believing that the amount of the deficiency

placed in dispute, or the amount of an overpayment, exceeds the applicable jurisdictional amount [$50,000] described in subsection (a), and (2) the amount of such excess is large enough to justify granting such request." *See Security Indus. Ins. Co.,* 830 F.2d at 584 n.6 ("Small cases can be 'discontinued,' however, and returned to the regular Tax Court docket . . . if the taxpayer or Secretary requests the 'discontinuance' and the Tax Court determines in its discretion that regular treatment of the case is appropriate because the amounts involved turned out to be significantly greater than $10,000 [now $50,000]." Here, the Tax Court found that "[t]here are no reasonable grounds for believing that the amount of the underlying liability in this case exceeds $50,000" (Doc. 35 at 5), and taxpayer has never asserted that the amount at issue exceeds $50,000. Because the requirements of I.R.C. § 7463(d) were not met, the Tax Court was precluded from discontinuing treating the instant case as a small tax case.

In her response to this Court's order, taxpayer asserts that the Tax Court should have removed the small tax designation because the jurisdictional issue of filing deadlines in I.R.C. § 6015(e) is a significant issue. (Response at 18-23.) As taxpayer recognizes, however, I.R.C.

§ 7463(d) describes only "one instance where the Tax Court may discontinue small tax case proceedings (*i.e.*, when it discovered that the amount involved exceeds the jurisdictional threshold)." (Response at 17.) Taxpayer's discussion of and reliance on legislative history regarding when "other circumstances might justify discontinuing small tax case status" (*id.*) is inappropriate in light of the plain terms of the statute.

In matters of statutory interpretation, courts begin with the text of the statute. *Knight v. Commissioner*, 552 U.S. 181, 187 (2008); *United States v. Burkholder*, 816 F.3d 607, 614 (10th Cir. 2016); *Salazar v. Butterball, LLC*, 644 F.3d 1130, 1136 (10th Cir. 2011). This Court looks no further than the text of the statute "[i]f the statute has a 'plain and unambiguous meaning with regard to the particular dispute in the case' and the statutory scheme is coherent and consistent." *Butterball*, 644 F.3d at 1137 (*quoting Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)). "Therefore, '[i]t is a well established law of statutory construction that, absent ambiguity or irrational result, the literal language of a statute controls.'" *St. Charles Inv. Co., v. Commissioner*, 232 F.3d 773, 776 (10th Cir. 2000) (*quoting Edwards v.*

Valdez, 789 F.2d 1477, 1481 (10th Cir. 1986)). And, "[w]here the language of the statute is plain, it is improper for this Court to consult legislative history in determining congressional intent." *St. Charles Inv. Co.,* 232 F.3d at 776. A court's "task is to apply the text, not to improve upon it." *Pavelic & LeFlore v. Marvel Entm't Group, Div. of Cadence Indus. Corp*. 493 U.S. 120, 126 (1989).

Here, the language of I.R.C. § 7463(d) is clear in providing that once small tax case status has been granted, there is but one instance where it can be removed – when the amount involved exceeds $50,000. Because taxpayer does not contend that she met this criteria, the Tax Court correctly denied taxpayer's motion.

2. We have not located any reported appellate opinion considering whether a taxpayer who elects the small case procedures may obtain appellate review of the denial of her motion to later remove the small case designation. As discussed above concerning whether a case dismissed for lack of jurisdiction is appealable, pp. 12-14, there is no reason why the Tax Court's denial of a motion to remove the small tax designation should render the decision entered in a small tax case appealable. If, as in this case, the Tax Court is precluded from

removing the small tax designation because the amount at issue is less than $50,000, the denial of such a motion should not somehow make that decision appealable. For, if a taxpayer could file a motion to remove a small tax designation (or a motion to vacate or reconsider) and then be able to appeal the Tax Court's denial of such a motion, it would defeat the purpose of having special procedures for small tax cases. And it would encourage taxpayers who receive an unfavorable decision to file such motions simply to obtain appellate review.

In sum, since taxpayer elected to conduct her case under I.R.C. § 7463(a), and since I.R.C. § 7463(b) bars an appeal from a decision in a small tax case, this Court is without jurisdiction to review the notice of appeal filed by taxpayer, and taxpayer's appeal should be dismissed for lack of jurisdiction.[3]

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[3] We note that taxpayer does not lack a remedy; she may pay the income tax deficiency determined against her and file a claim for a refund with the IRS. If the IRS denies her claim or fails to act on it within six months, she may sue for a refund in the appropriate district court or Court of Federal Claims. *See* I.R.C. §§ 6511(a), 7422(a), 6532(a)(1); 28 U.S.C. §§ 1346(a)(1), 1491(a)(1). A taxpayer can assert a claim for innocent-spouse relief under I.R.C. § 6015 in a refund suit. *See Jones v. United States*, 322 F.Supp.2d 1025, 1031-1032 (D.N.D. 2004); *Flores v. United States*, 51 Fed. Cl. 49, 52, 56-57 (2001).

CONCLUSION

For the reasons set forth above, taxpayer's appeal should be dismissed for lack of jurisdiction.

Respectfully submitted,

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/s/ Regina S. Moriarty

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Dated: This 30th day of November, 2017.

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FOR THE TENTH CIRCUIT

AMANDA N. VU,	)	
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Petitioner-Appellant	)	
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v.	)	**No. 17-9007**
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COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent-Appellee	)	

DECLARATION

Regina S. Moriarty, of the Department of Justice, Tax Division, Appellate Section, Washington, D.C., states as follows:

The facts in the appellee's memorandum concerning appellate jurisdiction are true and correct to the best of my knowledge.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed this 30th day of November, 2017, in Washington, D.C.

/s/ Regina S. Moriarty
REGINA S. MORIARTY
Attorney for Appellee

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/s/ Regina S. Moriarty
Attorney for The Commissioner of Internal Revenue
Dated: November 30, 2017

CERTIFICATE OF SERVICE AND DIGITAL SUBMISSION

It is hereby certified that on November 30, 2017, I electronically filed the foregoing memorandum using the Court's CM/ECF system which will send notification of such filing to the following:

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I hereby futher certify that with respect to the foregoing:

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/s/ Regina S. Moriarty
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