United States Tax Court
Washington, DC 20217

MALKA YERUSHALMI, Petitioner, JOSEPH YERUSHALMI, JANET BALDWIN, Next Friend, Intervenor, v. Commissioner of Internal Revenue, Respondent.	)	Docket No. 5520-08.

O R D E R

This case was on the Court's October 19, 2020 trial calendar for New York City and arises from deficiencies that date back to tax years 1999 and 2000. It was brought by Malka Yerushalmi and features her ex-husband Joseph as an intervenor -- he objects to her request for innocent-spouse relief. We've consolidated it for trial with her husband's own challenge to the same deficiencies. For more than thirteen years this case has been delayed by a legendarily prolonged divorce action in New York courts and a long detour by Mr. Yerushalmi into Bankruptcy Court.

In 2021 the Commissioner learned from a stipulation in their divorce action about the sale of properties that Mrs. Yerushalmi somehow shared with her husband. He concluded something wasn't quite right, and made a jeopardy assessment against her for the tax at issue in this case. She then moved for review of that assessment. The Commissioner timely filed his response; and her ex chimed in with his own response favoring the Commissioner.

Jeopardy Assessments

Jeopardy assessments are a little-visited cranny of the Code. Assessments are well-known to be the recording of a tax liability in the records of the IRS. IRC § 6203. Taxpayers can usually challenge any income-tax deficiency that the Commissioner determines in our Court *before* he can assess it. Jeopardy assessments are an exception to this general rule, and the Commissioner can make an assessment before our work is done if he determines that collection of a tax

liability might be in danger. He can't just do this willy-nilly, but must himself determine that collection is threatened by the presence of at least one of three conditions that the regulations describe. *See* 26 C.F.R. § 1.6851–1(a)(1)(i), (ii), or (iii).

Those conditions are:

- The taxpayer is or appears to be designing quickly to depart from the United States or to conceal herself;

- the taxpayer is or appears to be designing quickly to place her property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons; and

- the taxpayer's financial solvency is or appears to be imperiled.

We can ignore the first and third -- the Commissioner in this case argues only that Mrs. Yerushalmi meets the second condition.

Not only are jeopardy assessments themselves not that common, but the procedure for courts in reviewing them is quite unusual. A taxpayer caught by one has only 90 days from the time she gets notice that the Commissioner has made the assessment to challenge it. IRC § 7429(b).

District courts are the default venue for these challenges, but our Court has jurisdiction when, as here, a case regarding the taxes that are the subject of the jeopardy assessment is pending before us. IRC § 7429(b)(2)(B); Rule 56(a). We are not supposed to take the Commissioner at his word -- our determination on review is *de novo* and limited to two issues: (1) Is the jeopardy assessment "reasonable under the circumstances," and (2) is the amount assessed "appropriate under the circumstances." IRC § 7429(b)(3).

The parties agree that the amount assessed is appropriate, so our task is again made easier by focusing our attention on whether a jeopardy assessment was reasonable. The Code is clear that the Commissioner has the burden of proof on this issue. IRC § 7429(g). If we rule against him, we may order him to abate the assessment, redetermine the amount assessed, or to take any other action that we deem appropriate. IRC § 7429(b)(4).

The Code also makes our determination final and unappealable. IRC § 7429(f); *Gaw v. Commissioner*, 70 T.C.M. (CCH) 336, 337 (T.C. 1995). And we

get to base it on evidence that we would normally exclude -- we can look at all the information we find useful, even information that was unavailable to the Commissioner when he made the assessment. We also can look at evidence in the form of affidavits, including affidavits from revenue agents that contain their conclusions and opinions; at hearsay in the form of documents submitted as exhibits; and even at sworn testimony if (as did not occur here) the parties ask for a hearing. *McWilliams v. Commissioner*, 103 T.C. 416, 422-24 (1994).

Although our *scope* of review is *de novo* and not very limited, our *standard* of review is quite constrained. We have to uphold a jeopardy assessment if we find that it was "reasonable". Case law tells us that reasonableness is something more than "not arbitrary or capricious" and something less than "substantial evidence." *Davis v. United States,* 511 F. Supp. 193, 197 (D. Kan.1981) (quoting *Loretta v. United States,* 440 F. Supp. 1168, 1172 (E.D. Pa. 1977)); *see also Central de Gas v. United States,* 790 F. Supp. 1302, 1304 (W.D. Tex. 1992). Because the Supreme Court defines substantial evidence as something that "does not mean a large or considerable amount of evidence, but rather 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,'" *Pierce v. Underwood,* 487 U.S. 552, 565 (1988) (quoting *Consolidated Edison Co. v. NLRB,* 305 U.S. 197, 229 (1938)), this isn't very high a hurdle.

Analysis.

Malka Yerushalmi and Joseph Yerushalmi got married in 1971. Mr. Yerushalmi was a tax attorney at his firm, Yerushalmi & Associates, while Mrs. Yerushalmi has not worked outside the home since around 1983.

The Commissioner's concern began when he learned that there were pending sales of two properties that they had bought during their marriage -- their marital residence and a condominium the parties call the Blair House property.

The Great Neck Home

The Yerushalmis bought their '"marital residence," a house in Great Neck, in 1983. By the late '80s the Yerushalmis' two older children were closing in on adulthood and Mr. Yerushalmi began some estate planning. In July 1989 he executed a trust document called the July 31, 1989 Yerushalmi Family Trust ("Yerushalmi Family Trust I"). Mrs. Yerushalmi was designated as the grantor and a friend named Oded E'Dan was named as the trustee. Then in September 1995, Mr. Yerushalmi set up an irrevocable qualified personal residence trust (QPRT). Mrs. Yerushalmi was again the grantor and both she and her husband

were named as trustees. Their children were the beneficiaries.

The marital residence seemed to end up in this QPRT in 1996, when Mr. Yerushalmi alleges that he transferred his 50% ownership interest in the marital residence to his wife by deed. This gave Mrs. Yerushalmi complete ownership and, in her capacity as the QPRT's trustee, she transferred her now-100% interest in the marital residence to the QPRT in May 1996. The QPRT was recorded in Nassau County, New York in August that year.

That QPRT thus seemed to be in place before the years at issue here. For these years -- 1999 to 2001-- the Yerushalmis filed joint tax returns. Their 1999 Form 1040 showed a capital gain of more than $4.8 million and a loss of more than $3.2 million from an NOL carryback. The Yerushalmis claimed this NOL was from an alleged theft loss that occurred in 2001, and they claimed a refund of $660,000. The IRS reviewed the claimed loss and at first allowed them almost $400,000. More years passed, and in late 2007 the Commissioner issued a notice of deficiency to them for tax years 1999 and 2000. Central to the dispute is the Commissioner's disagreement with their claimed 2001 loss that led to the NOL that they were carrying back to 1999 and 2000.

The Yerushalmis' problems grew wildly worse in 2000s. In April of 2002, Mrs. Yerushalmi sued for divorce, the opening salvo in a battle that would end up lasting more than 17 years. In 2007 Mr. Yerushalmi filed a petition in bankruptcy for both himself and his law firm. After a few months these cases, originally filed under Chapter 11, were converted to Chapter 7.

The bankruptcy trustee thought that he could reach the marital residence and add at least part of its value to Mr. Yerushalmi's bankruptcy estate. The trustee, Marc Pergament, started an adversary proceeding against both Yerushalmis. In the end, the Bankruptcy Court held that the QPRT was valid and the marital residence was not part of the bankruptcy estate. *See Pergament v. Yerushalmi*, 487 B.R. 98, 111 (Bankr. E.D.N.Y. 2012).

This is where, in the Commissioner's opinion, things started to look odd. QPRTs are set to expire after a term. *See* 26 C.F.R. § 25.2702-5(b)(1). The Yerushalmis' QPRT expired in September 2018 and according to its terms the marital residence went to the Yerushalmi Family Trust I. But this transfer was not recorded. The next year, in April 2019, the Yerushalmis created the Yerushalmi Family Trust II for the benefit of their children and grandchildren. The trustees were Elani Shani and Doris L. Martin. In May Elan Shani issued a notice of exercise of power to decant the assets of Yerushalmi Family Trust I into Yerushalmi Family Trust II. That's a problem -- the notice of exercise identifies

Elan Shani as the trustee of the Yerushalmi Family Trust I, even though the trust agreement identified Oded E'Dan as the trustee of the Family Trust I.

Does that make the notice of decanting invalid? We don't know. But we do know that in August 2019 the Yerushalmis' divorce became final. In the stipulation filed as part of the divorce, the Yerushalmis stated that they themselves jointly owned the marital residence, and agreed that Mr. Yerushalmi would be entitled to 60%, and Mrs. Yerushalmi to 40%, of the net proceeds. There was no mention of either Family Trust.

The Blair House Condo

The Yerushalmis also bought a condo unit in a building called the Blair House in New York City. The Commissioner's investigation into its ownership showed that in April 1997, the condo's deed and mortgage (dated March 13, 1997) were recorded in Manhattan County. The owner was recorded as Fran Mulnick Parker as the trustee under the Yerushalmi Family Trust I. Remember, however, the Yerushalmi Family Trust I named Oded E'Dan as trustee. There is nothing in the record that Oded E'Dan ever resigned as the trustee of the Yerushalmi Family Trust I and Fran Mulnick Parker was appointed in his place. And we do have in the record documentation Elan Shani had became the trustee of the Yerushalmi Family Trust I by 2019.

The Yerushalmis' stipulation of settlement, however, states that the Blair House is "owned by Husband and Wife" and required it to be listed for an imminent sale and the proceeds to be divided 50/50. (It is currently under contract for about $900,000.)

Other Properties

The Yerushalmis also have other property which, even though not on the market, shows a similar pattern of ambiguity in titling. In November 2000, Mrs. Yerushalmi and her daughter Hadar bought a property on Warren Street in Manhattan for $1 million -- apparently funded by Mr. Yerushalmi. This property was titled to Mrs. Yerushalmi and her daughter, but she now alleges that she was only a nominee of the Warren Street property while her daughter is the true owner. She nevertheless recorded a transfer of her 50% interest in the Warren Street property to her daughter in early 2020. There is no documentation to show that she received any consideration for this transfer.

Then there's the property called "the Boulevard." Mrs. Yerushalmi and her daughter transferred their interest in this one to a Yerushalmi & Associates' client, Spags, at a value of $700,000 in satisfaction of a debt the firm owned to the client. The sale occurred even though neither Mr. Yerushalmi nor his law firm were owners of the Boulevard.

There's another document in the record that is also headscratchworthy. As part of the divorce action, Mr. Yerushalmi prepared a statement of his net worth as of March 8, 2018. It lists the marital residence as owned by the QPRT; and the Blair House, Warren Street, and some burial plots as owned by the Yerushalmi Family Trust I, where the trustee is Elan Shani, not Fran Mulnick Parker or Oded E'Dan.

So was imposing the jeopardy assessment reasonable here, under these circumstances? Was it reasonable to conclude that the taxpayer was designing quickly to place her property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons?

The Commissioner has made a good case. Mrs. Yerushalmi seems to be a nominee for at least the Boulevard property as she transferred her interest to intervenor's client, Spags, even though neither Mr. Yerushalmi nor his law firm held title to the Boulevard. She herself claims that she was a nominee while her daughter, Hadar Yerushalmi, is the true owner of the Warren property. And we don't know if Mr. Yerushalmi had some interest in that property, since he claims that he gave a million dollars to his wife to buy the Warren property with their daughter.

The unclear ownership of the Blair House condo also raises suspicions. The trust agreement of the Yerushalmi Family Trust I, the Blair House's notice of lien, and the May 13, 2019 notice each identify a different person as the trustee of the Yerushalmi Family Trust I. Given that the Blair House condo is titled to the Yerushalmi Family Trust I, who is the owner? The lack of public recording to reflect the changes of the trustees raises the suspicion that the taxpayer is trying to conceal ownership.

To make matters worse, in the divorce settlement, the taxpayer and intervenor stipulate that the Great Neck and Blair Houses are "owned by Husband and Wife." All these nominees and different statements about who owns what are substantial enough for a reasonable mind to agree with the Commissioner's

conclusion that Mrs. Yerushalmi appears to be concealing her property from the government. It is therefore

ORDERED that the taxpayer's October 14, 2021 motion for review of jeopardy assessment is DENIED.

(Signed) Mark V. Holmes
Judge