

Department  
of the  
Treasury

Internal  
Revenue  
Service

Office of  
Chief Counsel

# Notice

CC-2012-006

January 30, 2012

**Subject:** Tax Court's Jurisdiction over Section  
6651(a)(2) Addition to Tax

Upon incorporation  
**Cancel Date:** into the CCDM

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## Purpose

This notice discusses issues regarding the Tax Court's jurisdiction to determine a section 6651(a)(2) (failure to pay) addition to tax when the addition is based on an amount shown on a return other than a section 6020(b) return.

## Discussion

Before 1986, section 6214(a) provided that "the Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency . . . and to determine whether any additional amount, or addition to the tax should be assessed[.]" In Estate of Young v. Commissioner, 81 T.C. 879, 885 (1983), the Tax Court held that section 6214(a) did not provide it with the jurisdiction to determine any addition to tax under section 6651 unless that addition to tax is attributable to a deficiency. Accordingly, an addition to tax under section 6651(a)(2) measured by the amount actually shown on a submitted return would not have fallen within the jurisdiction of the Tax Court before 1986.

Section 1554 of the Tax Reform Act of 1986 amended section 6214(a) by inserting "any" before the words "addition to the tax." The legislative history specifically stated that the purpose of the amendment was to overrule Estate of Young, explaining that the amendment "provides that the Tax Court has jurisdiction over this addition to tax for failure to pay an amount shown on the return where the Tax Court already has jurisdiction to redetermine a deficiency in tax with respect to that return." H. Conf. Rept. 99-841 at II-804 (1986), 1986-3 C.B. (Vol. 4) 804; S. Rept. 99-313, at 200 (1986), 1986-3 C.B. (Vol. 3) 200.

In general, the subsequent Tax Court opinions are consistent with this legislative history of the amendment of section 6214(a). See Estate of Hinz v. Commissioner, T.C. Memo. 2000-6 (holding that the Tax Court has "undisputed jurisdiction" over section 6651(a)(2) additions to tax in a deficiency proceeding); Estate of Nemerov v. Commissioner, T.C. Memo. 1998-186 (holding that the Tax Court had the jurisdiction to determine a section 6651(a)(2) addition to tax assessed on the basis of the tax reported on the petitioner's return, citing the legislative history to the 1986 amendment of section 6214(a)); Lee Eng'g Supply Co., Inc. v. Commissioner, 101 T.C. 189, 196 n. 5 (1993)(acknowledging the 1986 amendment of section 6214(a) grants the Tax Court

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jurisdiction over section 6651(a)(2) additions to tax in a deficiency proceeding); cf. Judge v. Commissioner, 88 T.C. 1175, 1187 (1987) (holding that the Tax Court had the jurisdiction to determine overpayments of additions to tax under sections 6651(a)(1), 6651(a)(2), and 6654 even when such additions are not subject to deficiency procedures). In Vines v. Commissioner, T.C. Memo. 2009-267, however, the Tax Court contradicted this line of cases and legislative history by holding that a taxpayer could not raise the section 6651(a)(2) addition to tax in a deficiency proceeding because, as explained in dicta, the Tax Court lacked jurisdiction over a section 6651(a)(2) addition to tax not attributable to a deficiency.

It remains our litigating position that the Tax Court has jurisdiction over a section 6651(a)(2) addition to tax when it has jurisdiction to redetermine the deficiency of the tax for the period upon which the section 6651(a)(2) addition to tax is based. The dicta in Vines regarding the Tax Court's jurisdiction over the section 6651(a)(2) addition to tax is inconsistent with the legislative history of the 1986 amendment to section 6214(a), and should not be followed. Attorneys should not move to dismiss on jurisdictional grounds a taxpayer's claim seeking determination of a section 6651(a)(2) addition to tax in such a situation.

### **Changes to the CCDM**

To reflect this position, the CCDM will be amended as follows:

- (1) CCDM 35.3.2.1(4) will become (5). In its place, new CCDM 35.3.2.1(4) will be added to read as follows:

“There is no jurisdictional defect in a petition when a petitioner seeks a determination of a section 6651(a)(2) (failure to pay) addition to tax when the Tax Court already has jurisdiction to redetermine the deficiency of the tax for the period upon which the section 6651(a)(2) addition to tax is based. See Estate of Hinz v. Commissioner, T.C. Memo. 2000-6; Estate of Nemerov v. Commissioner, T.C. Memo. 1998-186. Motions to dismiss this claim on jurisdictional grounds should not be filed.”

- (2) CCDM 35.3.2.6(1) will be amended to read as follows:

“The Tax Court does not acquire jurisdiction over a year or a tax in which the statutory notice determined an overpayment, an overassessment, no deficiency in tax, or when the deficiency determined in the notice was assessed and paid prior to its issuance. If the petitioner attempts to place in controversy a year or a tax in which the statutory notice did not determine a deficiency (or liability in transferee cases), a jurisdictional motion with respect to this part of the case should be filed. See Exhibit 35.11.1-37. There is an exception with respect to years involved in carryover or carryback issues. Facts with respect to other years not before the court may sometimes have to be resolved to determine the tax effect for the year before the court. See section 6214(b). Once the court acquires jurisdiction over a year or a tax, it has jurisdiction to redetermine the deficiency contested by the petitioner, any overpayment of tax for a year over which the court has acquired jurisdiction, and any section 6651(a)(2) (failure to pay) addition to tax regarding the tax period at issue. See sections 6214(a), 6512(b).”

