



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

CC:DOM:FS:PROC

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

December 29, 1998  
MEMORANDUM FOR

DISTRICT COUNSEL

FROM: Richard G. Goldman  
Special Counsel CC:DOM:FS:PROC

SUBJECT:

This Field Service Advice responds to your memorandum dated September 30, 1998. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

Date 1 =  
Date 2 =  
Year 1 =  
Year 2 =  
Year 3 =  
Year 4 =  
Year 5 =  
\$a =  
\$b =  
\$c =

ISSUE(S):

Whether the United States Tax Court has jurisdiction over a year for which a notice of deficiency was issued but no deficiency was determined.

## CONCLUSION:

Although the Tax Court is without authority to determine a deficiency or overpayment for Year 4, it can consider such facts from Year 4 as may be necessary to correctly redetermine the taxpayer's tax liability for a year with respect to which a deficiency has been determined and is properly before the court. I.R.C. § 6214(b).

## FACTS:

On Date 1, the Internal Revenue Service (Service) sent petitioners a notice of deficiency for the taxable years 3, 4, and 5. Although deficiencies were determined for Years 3 and 5, no deficiency was determined for Year 4. For Year 4 all of petitioners miscellaneous itemized deductions were disallowed, increasing taxable income from a net loss of (\$a) to \$b. The disallowance resulted in a redistribution of tax among alternative minimum tax, self employment tax and income tax. The total amount of tax due, however, did not change for Year 4. Thus, no deficiency was determined for Year 4.

On Date 2, petitioners filed a petition in the United States Tax Court challenging the notice of deficiency for Years 3, 4, and 5. In that petition they state that the notice of deficiency alleges an understatement in the amount of taxable income reported, resulting in the disallowance of petitioner's reported net loss. The petition states that the entire amount of the alleged understatement of taxable income is in dispute. In their prayer for relief petitioners request that the Court determine for Year 4 that petitioner properly claimed \$c as a miscellaneous itemized deduction and that there is no basis for the Service's denial of such deduction. Years 1 and 2 are also docketed and before the court.

Respondent filed an answer alleging that the court has jurisdiction over Year 4 for the limited purpose of determining whether the petitioners have a net operating loss for Year 4 and whether it can be carried back to Year 1 or some other year before the court.

## LAW AND ANALYSIS

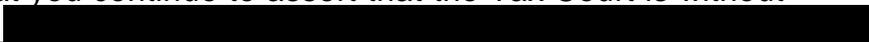
Generally, the Service must make a deficiency determination and issue a notice of same as a prerequisite to the Tax Court obtaining jurisdiction or authority over a particular taxable period or year. I.R.C. 6214(b); Parker v. Commissioner, 37 T.C. 331, 332 (1961) (no jurisdiction where overassessment instead of a deficiency was determined); Pacon v. Commissioner, 45 T.C. 392, 396-397 (1966) ("we consider it necessary to our jurisdiction that a deficiency exists when the notice is issued); Snyder v. Commissioner, T.C. Memo 1983-692 (respondent sent

a deficiency notice for 1975, 1976 and 1977 but no deficiency was determined for 1977; the court held that it did not have jurisdiction over the 1977 year.) Tyson v. Commissioner, T.C. Memo. 1979-122 (after audit respondent determined an overassessment in tax but no deficiency; the court held that it did not have jurisdiction.); Harris v. Commissioner, T.C. Memo. 1970-331, aff'd. per curiam 73-1 USTC ¶ 9205 (9th Cir. 1972). In this case, although a notice of deficiency was issued, no deficiency was determined for Year 4. Because there is no deficiency, the Tax Court does not have jurisdiction over Year 4.

Although the Tax Court is without authority to determine a deficiency or overpayment for Year 4, it can consider such facts from Year 4 as may be necessary to correctly redetermine the taxpayer's tax liability for a year with respect to which a deficiency has been determined and is properly before the court. I.R.C. § 6214(b). More specifically, the Court can consider the existence and amount of a loss to be carried back to or forward from Year 4 in order to decide its effect upon a taxable period under its jurisdiction. Harris v. Commissioner, supra.

At this point, petitioners have not asserted that they are entitled to carry back or carry forward any net operating loss from Year 4 to the years properly before the court. The petition only seeks a determination that the disallowance of deductions in Year 4 was improper. The court is without jurisdiction to make this determination.

#### CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

We recommend that you continue to assert that the Tax Court is without jurisdiction over Year 4.   


If you have any further questions, please call (202) 622-7950.