

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRB

ALVAN L. BOBROW & ELISA S. BOBROW,)
)
 Petitioners,)
)
 v.) Docket No. 7022-11.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

On February 28, 2014, petitioners filed a Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161.¹ Petitioners argued that the Court’s holding in this case, Bobrow v. Commissioner, T.C. Memo. 2014-21, represents “substantial error”. Specifically, petitioners allege substantial error in the Court’s interpretation of section 408(d)(3)(B) because, they say, the Court’s interpretation is contrary to respondent’s published guidance. Our holding interprets section 408(d)(3)(B) to apply across all of a taxpayer’s individual retirement accounts (IRAs), whereas Publication 590, Individual Retirement Arrangements (IRAs), applies the section 408(d)(3)(B) limitation separately to each IRA. On April 7, respondent filed a Notice of Objection to Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161 (Notice of Objection).

On March 27, 2014, the American College of Tax Counsel (the College) filed an Amicus Curiae Brief in support of petitioners’ motion for reconsideration. The College’s amicus brief discussed Publication 590 and also noted that section 1.408-4(b)(4)(ii), Proposed Income Tax Regs., 46 Fed. Reg. 36206 (July 14, 1981) (the proposed regulation), served as the basis for the relevant portion of Publication 590. The College’s amicus brief argued that the Court should reconsider our holding to conform with Publication 590. Additionally, the College argued that section 1.6662-4(d)(3)(iii), Income Tax Regs., allows proposed regulations to serve

¹All Rule references are to the Tax Court Rules of Practice and Procedure. All section references are to the Internal Revenue Code.

SERVED Apr 15 2014

as sources of substantial authority that would mitigate or negate a section 6662 accuracy-related penalty.

Neither petitioners nor respondent raised Publication 590 or the proposed regulation in their opening briefs, reply briefs, or sur-reply briefs. Petitioners first discussed Publication 590 in their motion for reconsideration but did not discuss the proposed regulation. Petitioners assert in their motion for reconsideration that Publication 590 should inform our interpretation of section 408(d)(3)(B) and that, at a minimum, Publication 590 provides petitioners with reasonable cause for their position, sufficient to negate the section 6662 penalty.

Respondent first discussed Publication 590 and the proposed regulation in the Notice of Objection. Respondent acknowledged that Publication 590 and the proposed regulation should have been addressed in respondent's briefs.

The Court was aware of the position taken in Publication 590 prior to the issuance of the opinion in this case. Since neither party discussed Publication 590 in their briefs, the Court did not address it in its holding. Regardless, respondent's published guidance is not binding precedent. See Johnson v. Commissioner, 620 F.2d 153 (7th Cir. 1980), aff'd, T.C. Memo. 1978-426; Carpenter v. United States, 495 F.2d 175 (5th Cir. 1974); Adler v. Commissioner, 330 F.2d 91, 93 (9th Cir. 1964), aff'd, T.C. Memo. 1963-196. Additionally, taxpayers rely on IRS guidance at their own peril. Miller v. Commissioner, 114 T.C. 184, 194-195 (2000), aff'd sub nom. Lovejoy v. Commissioner, 293 F.3d 1208 (10th Cir. 2002). Thus, had petitioners argued reliance on Publication 590 in their briefs, such an argument would not have served as substantial authority for the position taken on their tax returns.

On March 20, 2014, the IRS released Announcement 2014-15, Application of One-Per-Year Limit on IRA Rollovers. Announcement 2014-15 announced that the IRS will follow the Court's decision in this case but will not enforce the section 408(d)(3)(B) limitation as applying to all of a taxpayer's IRAs until January 1, 2015. Respondent's Notice of Objection agrees to extend the approach set forth in Announcement 2014-15 to petitioners, thus reducing petitioners' tax liability and the associated 6662 penalty.

On April 3, 2014, the parties filed a Status Report advising the Court that the parties have reached a basis for a proposed settlement. Because the Court will enter the stipulated decision, it is

ORDERED that petitioners' Motion for Reconsideration, filed February 28, 2014, is denied as moot. It is further

ORDERED that the parties no longer need to comply with the Court's Order dated March 27, 2014, requiring the parties to file a response to the amicus curiae brief by the American College of Tax Counsel.

(Signed) Joseph W. Nega
Judge

Dated: Washington, D.C.
April 14, 2014