IN THE UNITED STATES TAX COURT

ALAN C. DIXON

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Defendant.

13874-19

Case No. _____

PETITION FOR REDETERMINATION

The Petitioner, Alan C. Dixon, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in the Commissioner's Notice of Deficiency for tax year 2015, dated April 30, 2019, and as the basis for the Petitioner's case alleges as follows:

1. The Petitioner is an individual who is an Australian National with a current mailing address now at 254 Montgomery Street, Jersey City, NJ 07302. The return for the period here involved was an individual income tax return filed by the Petitioner on or around June 20, 2016.

Address Used By Court

2. The Notice of Deficiency for tax year ending 2015 was mailed to the Petitioner, and issued by the Department of the Treasury, Richmond, Virginia 23219, attached hereto as Exhibit A-B.

3. The deficiency, as determined by the Commissioner, is in income tax for the calendar year 2015 in the amount of $1,490,948.00, all of which is in dispute.

4. The determination of tax set forth in said 2015 Notice of Deficiency is based on the following errors:

a. The Commissioner erred in correcting Petitioner's $6,527,412.00 of business income to dividend income.

b. The Commissioner erred in determining that Petitioner had $0.00 in Foreign Tax Credits;

c. The Commissioner erred in determining that Petitioner's Total Corrected Tax Liability is $2,091,916.00.

d. The Commissioner erred in determining that Petitioner had a balance due of $72,740.00 on March 29, 2019.

e. The Commissioner further erred by issuing a second revised Notice of Income Tax Examination Changes without proper notice or opportunity to be heard on April 1, 2019, in which the Commissioner deleted line 15a from the prior Income Tax Examination Changes notice, effectively creating a new balance due of $1,490,948.00.

5. The facts upon which the Petitioner relies, as the basis of the Petitioner's case, are as follows:

a. Petitioner is an Australian national temporarily working in the United States at Dixon Advisory, USA on an E-2 Visa. Petitioner has been a resident of Jersey City, NJ for the past 5 years, and is a United States taxpayer.

b. Petitioner is the managing member and CEO of Dixon Advisory, USA. Dixon Advisory, USA is the U.S. subsidiary of Dixon Advisory Group Pty Ltd, which later merged into Evans Dixon Ltd in late 2017. Dixon Advisory Group Pty Ltd, now existing as Evans Dixon Ltd is a publicly traded company formed in Australia and that currently conducts business in Australia.

c. Petitioner did not have a properly assigned EIN for Dixon Advisory Group Pty Ltd previously. On February 8, 2016, Petitioner filed Form SS-4, Application for Employer Identification Number, for Dixon Advisory Group, Pty. Ltd., in which Petitioner properly

classified Dixon Advisory Group as a Partnership for U.S. federal income tax purposes. The IRS approved and accepted the form on February 9, 2016, attached hereto as Exhibit C.

d. Treasury promulgated Regulation 301.7701-2 states that classification of a foreign entity will by default be classified as a corporation for federal tax purposes unless it elects otherwise under Treasury Regulation 301.7701-3.

e. Petitioner classified Dixon Advisory Group as a Partnership for federal tax purposes. The IRS accepted Petitioner's election retroactive back to May 30, 1986. This effectively categorizes Dixon Advisory Group's income as Petitioner's business income, in which he then is allowed to take a foreign tax credit for since Petitioner is deemed to have directly paid the tax in Australia. It should be noted that the Internal Revenue Service approved Petitioner's 2012 Amended U.S. Tax Return on these grounds.

f. In the alternative, it is Petitioner's position that, in *Home Concrete,* the U.S. Supreme Court explained that Treasury regulations could not stretch the plain meaning of a statute. *U.S. v. Home Concrete & Supply, LLC,* 132 S. Ct. 1836 (2012). This was in addition to the oft-cited Intermountain case that explained that if a statute is unambiguous, it forecloses Treasury's ability to promulgate regulations to "fill-in gaps." *Intermountain v. C.I.R.* 134 T.C. 211 (2010). Lastly, in *Dominion,* the U.S. Court of Appeals for the Federal Circuit held that regulations could not exceed the intent of Congress. *Dominion Res., Inc. v. U.S.,* 681 F. 3d 1313 (Fed. Circ. 2012).

g. These three cases impose limits on Treasury's ability to promulgate regulations entitled to *Chevron* deference: the Commissioner is limited to the plain meaning of statutes, limited to fill-in in ambiguous gaps, and limited to the intent of Congress.

h. Thus, the *Entity Classification Regulations* go far beyond the plain meaning of Section 7701(a)(3). Congress was clear: a corporation is a corporation but also "includes

associations, joint-stock companies, and insurance companies." Section 7701(a)(2), however, was more clear: a partnership is a partnership but also "includes a syndicate, group, pool, joint venture." The plain meaning of the term "syndicate" is "a group of individuals or organizations combined to promote some common interest/" Congress made this even more clear by including the term "group" in what's considered a partnership. In other words, a partnership is every other kind of group of persons other than a corporation. It is the catch-all provision since every other type of entity involves groups of persons united toward a business goal.

i. Then, Treasury promulgated Regulation 301.7701-2, to say that the default classification of a similarly-situated foreign entity, even if entirely and wholly identical to a U.S. limited liability company, will be classified by default as a corporation for federal tax purposes unless and until it elects otherwise. However, there is no statutory support, let alone statutory ambiguity for this discriminatory treatment. A U.S. limited liability company is a partnership by default, but a foreign limited liability company is a corporation by default.

j. Furthermore, this is discriminatory treatment of Australian LLC equivalents is a clear violation of the U.S.-Australia Income Tax Treaty, Article 23, Non-Discrimination, which specifically states that there should be no more burdensome taxation requirements upon Australian persons.

k. In addition, Petitioner believes that IRS Agent Anton Pukhalenko has improperly harassed him, violated his constitutional right to procedural due process, and failed to follow IRS administrative procedures in regard to examining Petitioner in violation of the IRS Restructuring Act of 1998.

l. IRS Agent Anton Pukhalenko examined Petitioner's 2014 amended return. Mr. Pukhalenko then said he would look at 2013 for Petitioner as well. After July 13, 2018,

Petitioner was unable to get into contact with Mr. Pukhalenko after multiple tries, regarding his 2014 examination, thereby triggering his claim for refund in the Court of Federal Claims for tax y ears 2013 and 2014.

m. Shortly after Petitioner filed suit for the recovery of his 2013 and 2014 amended returns, Mr. Pukhalenko initiated another examination on Petitioner's 2015 original return. However, Mr. Pukhalenko totally failed to follow IRS administrative procedures during this examination.

n. Although Petitioner filed his 2015 tax return on June 20, 2016, Mr. Pukhalenko did not initiate an exam until February 22, 2019, less than two months until the deadline to assess tax against Petitioner and shortly after Petitioner filed suit for his 2013 and 2014 amended returns. Petitioner did not agree to an extension of time for Mr. Pukhalenko to examine his 2015 return. The next communication that Petitioner received was a formal document request without ever having received any communication about documents needed, an informal document request, a telephone meeting to discuss the issues, etc. However, included in this formal document request was a completely redacted informal document request that had supposedly been sent to Petitioner a week and a half prior. As the basis for not responding to that document issued a week prior without any other communications, Mr. Pukhalenko issued a formal summons.

o. According to the new process for issuing an IDR to a taxpayer, "the taxpayers will be involved. Examiners will discuss the issue being examined and the information needed with the taxpayer prior to issuing an IDR. Examiners will ensure that the IDR clearly states the issue and the relevant information they are requesting. If the taxpayer does not timely provide the information requested in the IDR by the *agreed upon date*, including extensions, the examiner will issue a delinquency notice. If the taxpayer fails to respond to the delinquency notice or

provides an incomplete response, the examiner will issue a pre-summons notice to advise the taxpayer that the IRS will issue a summons unless the missing items are fully provided. A summons will be issued if the taxpayer fails to provide a complete response to the pre-summons letter by its response due date." A valid FDR is any request made after the normal request procedures have failed to produce the requested documentation. *See* Yujuico, 818 F. Supp. at 287; *See* 26 U.S.C. §982(c)(1). In addition, Section 982 provides that the FDR must set forth "a description of the documentation being sought." *Id.*

p. The Internal Revenue Code does not authorize an IRS agent to send a taxpayer an FDR without properly: (1) communicating with the taxpayer the issues being examined, (2) sending the taxpayer an informal IDR with an agreed upon date to answer the informal IDR and (3) the taxpayer choosing to not submit the requested document in the IDR. Mr. Pukhalenko did not abide by the IRS process for issuing an IDR, never spoke to Petitioner about the issue being examined, did not discuss a date for Petitioner to respond to the IDR, and did not issue an IDR to Petitioner. Then, Agent Pukhalenko issued a FDR requesting "the documents shown on Form 4564, Information Document Request". Agent Pukhalenko attached a completely redacted Form 4564 to the FDR with a mailing date of March 12, 2019.

q. Following the formal document request, Mr. Pukhalenko issued two extremely different Proposed Income Tax Examination Changes for 2015 with conflicting amounts. This was never explained and Petitioner relied on the first assessment in determining it was not worth his time to respond since it was an assessment for only $72,740.00. The subsequent and conflicting assessment three days later assessed $1,490,948.00. Thirty days thereafter, Mr. Pukhalenko issued the statutory Notice of Deficiency with a very similar assessment amount as is being requested in the claim for refund for 2014. Petitioner contends that this rapid and baseless

assessment was retaliation to neutralize his rightful claim to refund of $1,490,948.00 for 2014.

r. With the exception of the informal IDR, Petitioner has admitted to receiving each document and communication without fail and has done his part as a taxpayer to comply and work with the IRS. It is not plausible that Petitioner did not receive the specific letter required to be issued before an IRS agent can issue a FDR if it actually had been sent. Petitioner believes Mr. Pukhalenko never sent the IDR he references in the FDR. Furthermore, Agent Pukhalenko has not in good faith worked with the taxpayer for any extra documentation needed as described in the IRS procedures. Additionally, the FDR that was issued to Petitioner fails because it does not contain a visible description of the documentation being sought. The FDR only requests the documents issued on the IDR that Petitioner did not receive or know about and then has a completely redacted IDR attached to the FDR, aside from the foreign tax credit paragraph.

s. Agent Pukhalenko fails to show that he issued the FDR in good faith. *United States v. Powell,* 379 U.S. 48, 58, 85 S.Ct. 248, 13 L.Ed.2d 112 (1964). Such an abuse would take place if the Summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation. *Id.*

t. For all the reasons stated above, Petitioner therefore, argues that his 2015 tax return is correct and that he is entitled to the recovery of his 2015 refund.

u. Petitioner further argues that IRS Agent Anton Pukhalenko has improperly harassed him, violated his constitutional right to procedural due process, and failed to follow IRS administrative procedures in regard to examining Petitioner and issuing the Statutory Notice of Deficiency.

PRAYER

WHEREFORE, Petitioner, Alan C. Dixon, prays that this Court may try this case, determine that no adjustments should be made to Petitioner's 2015 income tax return, issue Petitioner his claim for refund in the amount of $1,418,208.00, and give such other and further relief as the Court may deem fit and proper.

Respectfully submitted,

Dated: July 24, 2019

ADMITTED

Kathryn Magan

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