Current Federal Tax Developments

Week of December 6, 2021

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SECTION: 6013
WIFE FOUND TO HAVE GIVEN TACIT CONSENT TO JOINT RETURNS FILED WITHOUT HER SIGNATURE

Citation: Soni v. Commissioner, TC Memo 2021-137, 12/1/21

In the case of *Soni v. Commissioner*,[1] the Tax Court found that Anjali Soni, despite never signing the joint income tax return with her husband for the year in question, had tacitly consented to the filings and thus faced joint liability for any tax due on that return.

The Court gave the following general background on Anjali:

> Anjali lived a traditional but affluent lifestyle and chose to remain uninvolved with her family's financial matters. In general she did not sign documents, such as tax forms, for fear they might be something nefarious. Because her uncle had stolen from her Indian family in the past by forging her father's signature on legal documents, she remained leary of signing documents and made it an ordeal to get her signature on any document.
>
> However, Anjali was generally aware of U.S. tax return filing requirements. She was aware that they were paying tax but did not want to interfere with matters she perceived as her husband's responsibility. Anjali chose to not take part in the financial matters of the home, including tax matters. Since the time of their marriage, Anjali has never signed a tax return or asked anyone to sign a tax return for her. She did not pay attention to tax issues. Anjali fully expected and trusted her husband to handle all financial affairs, including all the tax matters.[2]

This combination of her suspicion of being asked to sign documents (the court later refers to her concern that someone, presumably her husband, might attempt to deceive her to sign papers leading to a divorce), her related refusal to sign virtually any document and her expectation and trust that her husband would take care of their tax matters created the issues that this case looked to resolve.

The couple's tax returns were prepared as follows:

> The Sonis' 1999 through 2004 tax returns were prepared by an outside accounting firm in coordination with Om's businesses' internal accounting departments. The tax records and the returns were maintained by those accounting departments. At each yearend, a controller from one of Om's businesses and other accounting staff

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[1] *Soni v. Commissioner*, TC Memo 2021-137, December 1, 2021, https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/wife%e2%80%99s-tacit-consent-led-to-filing-joint-return/7cnbm (Retrieved December 4, 2021)

[2] *Soni v. Commissioner*, TC Memo 2021-137, December 1, 2021

> compiled and reviewed business records and personal records. They then gave the outside accountants the information needed to prepare the Sonis' personal returns. All returns were prepared selecting married filing jointly status. Om inspected and signed the returns but failed to follow through to see whether his wife had personally reviewed and signed them.
>
> The 2004 tax return preparation and filing followed this protocol. In particular for the 2004 tax return, Ralph Crisci from Ives & Sultan prepared the return. Om's staff compiled and transmitted information to Mr. Crisci for the return with the exception of information related to the S corporation, Beauville Corp. Om coordinated instead with Alan Grossman, a certified public accountant, to provide that information. In 2004 the Sonis claimed a $1,777,789 loss deduction from Beauville Corp. Mr. Crisci discussed the loss with Om and Mr. Grossman prior to the return being filed. Mr. Crisci relied on representations from them that there was sufficient basis for the loss deduction. Unknown to Mr. Crisci, Om's recordkeeping was poor, especially as it related to tracking his basis in Beauville Corp.
>
> The Sonis received two extensions of time to file their 2004 Form 1040, U.S. Individual Income Tax Return. The extended due date was October 17, 2005, because October 15, 2005, was a Saturday. See sec. 7503. Om signed the 2004 return on that date. Anjali's signature is also dated October 17, 2005. The return was mailed to the Internal Revenue Service (IRS) on November 10, 2005, and received by the IRS on November 14, 2005.[3]

The opinion notes that while the 2004 Form 1040 had a signature on the return for Soni, she did not actually sign it:

> Anjali did not sign the 2004 tax return. A spouse's failure to sign the return removes the presumption of correctness ordinarily attaching to the Commissioner's determination of jointness. *O'Connor v. Commissioner*, 412 F.2d 304, 309 (2d Cir. 1969), *aff'g in part, rev'g in part and remanding* T.C. Memo. 1967-174. Consequently, where a spouse does not sign a purported joint return, the Commissioner bears the burden of producing evidence that a joint return was intended. *Id.* Because Anjali did not sign, respondent bears the burden to show that the return was filed jointly.[4]

So, the question was whether Anjali had consented to the filing of the joint return (and thus would be potentially liable for tax found to be due on that return) or, rather, she simply had not filed a return, in which case, the court pointed out in a footnote, she could still face a tax assessment on any income she might have from that year as the statute would remain open. The taxpayers were arguing for the second option (she had

[3] *Soni v. Commissioner*, TC Memo 2021-137, December 1, 2021

[4] *Soni v. Commissioner*, TC Memo 2021-137, December 1, 2021

never filed a return), but the IRS argued she had given tacit consent to a joint return being filed without her signature.

The opinion outlines the "tacit consent" rule for a joint return as follows:

> Section 6013(a) permits a husband and wife to file a joint return. Spouses who elect to file a joint return for a tax year are required to compute their tax on the aggregate income of both spouses, and both spouses are jointly and severally liable for all tax due. Sec. 6013(d)(3); *Harrington v. Commissioner*, T.C. Memo. 2012-285, at *4. Whether an income tax return is a joint or separate return is a question of fact that depends on the intent of the parties. *Heim v. Commissioner*, 27 T.C. 270, 273-274 (1956), *aff'd*, 251 F.2d 44 (8th Cir. 1958). Consequently, married filing jointly status does not apply to a return unless both spouses intended to make a joint return. See *Lane v. Commissioner*, 26 T.C. 405, 408-409 (1956); *Weber v. Commissioner*, T.C. Memo. 1995-125, 1995 WL 128456, at *3.
>
> The failure of one spouse to actually sign does not necessarily negate the intent to file a joint return by the nonsigning spouse. *Estate of Campbell v. Commissioner*, 56 T.C. 1, 12 (1971); *Hennen v. Commissioner*, 35 T.C. 747, 748 (1961). Intent may be demonstrated through tacit consent; the "tacit consent rule" holds that the intent to file jointly may be inferred from the acquiescence or tacit approval from the nonsigning spouse. *Hennen v. Commissioner*, 35 T.C. at 748; *Okorogu v. Commissioner*, T.C. Memo. 2017-53, at *19. This Court has considered a variety of factors in deciding the issue of tacit consent, including whether the nonsigning spouse filed a separate return, whether the nonsigning spouse objected to filing jointly, and whether the prior filing history indicates the intent to file jointly. *Okorogu v. Commissioner*, at *19-*21; see also *Heim v. Commissioner*, 27 T.C. at 274; *Howell v. Commissioner*, 10 T.C. 859, 866 (1948), *aff'd per curiam*, 175 F.2d 240 (6th Cir. 1949); *Carroro v. Commissioner*, 29 B.T.A. 646, 650 (1933). Additionally, a pattern of relying on one's spouse to handle the family's financial matters, including preparation of tax returns, suggests that the spouse consented to the other spouse's filing of the return. *Estate of Campbell v. Commissioner*, 56 T.C. at 12-13; *Okorogu v. Commissioner*, at *20.
>
> Overall, "[t]he tacit consent rule has been described as an extension of the presumption of correctness that generally attaches to the Commissioner's determinations, specifically, a determination that a joint return was made despite the fact that one spouse failed to sign the return." *Okorogu v. Commissioner*, at *20. Moreover, a joint return has been upheld where no part of the spouse's signature on the return was in the spouse's handwriting. *Estate of Campbell v. Commissioner*, 56 T.C. at 13.

The Tax Court rejected the Sonis argument that the tacit consent did not apply since someone other than Anjali had signed the return, finding this did not impact whether she had consented to the filing. But the court agreed with the Sonis that this situation required a facts and circumstances determination—but that those facts and circumstances show that Anjali had tacitly consented to the joint filing.

The Court notes that both spouses agree that Om had always managed the household finances, and that Anjali consented to that arrangement:

> The Sonis have been married since 1978. Throughout their marriage, Om took care of the family finances and Anjali handled the home matters. Anjali enjoyed an affluent lifestyle and chose not to be involved in her family's finances or tax preparation. Consequently, Anjali believed and continues to believe it is her role to trust her husband with the financial matters for the couple. Anjali stated that "[w]e've been taught your husband always takes care of you. He does the right thing, and you've got to trust him. My mother did that. My grandmother did that. We all do that." Therefore in her role with the family, Anjali did not discuss financial matters including tax preparation because that was left up to her husband.[5]

As was noted earlier, evidence that the non-signing spouse left all financial and tax matters to be taken care of by the signing spouse is a factor that supports (but does not necessarily require) the view that the non-signing spouse tacitly consented to the joint return.

As well, there was a long history of this joint filing, for years both before and after the year before the Tax Court:

> For tax years 1999 through 2003 the Sonis filed jointly. The record shows that for tax years 2005 through at least 2014 they continued to file jointly. As of the date of trial, the Sonis had not yet filed for tax years 2015 through 2017. The 2004 return was prepared and filed as a joint return. For all years the process for preparing the returns was the same. The information for the returns was gathered by the accounting departments of Om's businesses and sent to an outside accounting firm to prepare. All returns were then reviewed by personnel in Om's businesses before submission to him for filing. Om reviewed and signed all returns.[6]

The opinion goes on to explain the process by which Mr. Om himself was apparently not aware that his wife wasn't actually signing the returns in question:

> He generally asked his son or a staff member to get Anjali's signature. However, the record is unclear as to who signed the 2004 tax return for Anjali. While Anjali did not personally sign the 2004 return, this was standard practice of their tax return preparation. Consequently, Anjali chose to trust her husband's handling of their family's finances,

[5] *Soni v. Commissioner*, TC Memo 2021-137, December 1, 2021

[6] *Soni v. Commissioner*, TC Memo 2021-137, December 1, 2021

> which included preparation and filing of their tax returns, including the 2004 tax return.[7]

Again, Anjali was aware of the need to file tax returns, and over all these years had never indicated a problem with this process. That is also a factor in favor of finding she had tacitly approved these joint filings.

But it's not just her actions with regard to the filed returns that indicated that Anjali had tacitly approved the joint filings. The fact that she took no actions to attempt to file her own returns at any time over these years also indicate she accepted how the situation had been handled over the years:

> …[O]ther factors this Court considers are whether Anjali objected to filing jointly or made any attempts to file separately. See, e.g., *Heim v. Commissioner*, 27 T.C. at 274; *Howell v. Commissioner*, 10 T.C. at 866; *Carroro v. Commissioner*, 29 B.T.A. at 650. Anjali had not taken any affirmative actions, filed any separate returns, or made attempts to disavow the joint status of the 2004 return before the date of trial. She had access to and frequently brought in the family mail and would have seen bills, financial accounts, and IRS notices in the mail. Many of those notices were addressed to her or to her and her husband jointly. She was aware that they had a tax filing obligation in the United States; however, she testified that she did not "really pay attention" to tax issues and felt she was "just out of the whole system." She chose to let other family members handle those issues. Anjali did not make any attempts at filing separately from Om. She trusted Om to handle the tax matters.[8]

The fact that she simply decided to remain unaware of the details of their tax situation and trusted her husband to handle the situation suggested that she had tacitly approved of the joint filings. The opinion concludes:

> On balance, the evidence leads us to conclude that Anjali approved or at least acquiesced in the joint filing of their 2004 return. Anjali did not discuss financial matters with her husband or her son. She was generally aware of the U.S. tax system but chose not to engage. Anjali relied on and continues to trust her husband and son to handle the tax matters, including their Federal income tax returns. Anjali was not interested in viewing the contents of the return; she viewed it as her husband's responsibility for the family. Anjali had the opportunity to take affirmative steps upon receiving notices. However, she did not take any affirmative steps in attempting to file separately or object to the 2004 return. Overall, Anjali repeatedly reiterated that she fully trusted her husband and son to handle the financial issues for her. Anjali chose to let others handle all of her affairs for her. It was part of her arrangement with her husband that he handle all of their tax-

[7] *Soni v. Commissioner*, TC Memo 2021-137, December 1, 2021

[8] *Soni v. Commissioner*, TC Memo 2021-137, December 1, 2021

> related matters. Therefore, she tacitly consented to filing the 2004 return jointly.[9]

Note that this case only considers whether Anjali could escape the consequences of the joint filing based on the fact she did not sign the returns in questions. The holding does not endorse the forging of her signature by a third party on the tax return and it's important to note that the taxpayers were careful to argue that her husband was unaware she was not signing the tax returns (although he clearly did not go out of his way to assure she did). So, this case does not provide authority that it's "fine" for one spouse to sign a return for both spouses, or otherwise arrange to have a joint return filed without the explicit consent of the other spouse.

But it does give a warning to spouses that if they do not take steps to assert they do not wish to file a joint return, such as by filing their own married filing separate return, they are at grave risk of being liable for a joint return their spouse may have filed on their behalf.

Each spouse is responsible for being sure they are personally complying with tax filing responsibilities, and that does mean making sure a return is filed. The failure to file that separate return will generally be fatal to a later attempt to claim the spouse never consented to filing joint absent a showing of accepting the filing under threats or other coercive actions.

SECTION: 6221
EMAIL EXPLAINS IMPUTED ADJUSTMENTS ARISING FROM "MONEY NUMBERS" THAT AREN'T ITEMS OF INCOME, GAIN, LOSS, DEDUCTION OR CREDIT

Citation: IRS Emailed Counsel Advice 202148006, 12/3/21

In emailed chief counsel advice,[10] counsel explained how and when "money numbers" impact the calculation of the imputed adjustment (IU) for a partnership being examined under the BBA centralized partnership audit regime. The issue involved adjustments of items that would not directly impact the amounts reported on that year's Form 1065, but do involve a partnership item stated in terms of dollars.

The email begins by noting "[i]f we adjust any partnership-related item (PRI) that is a 'money number' on the Form 1065 or in the partnership's books and records, it goes into the calculation of the IU."[11] The advice continues on to note that "[a]n adjustment to an item that is not an item of income, gain, loss, deduction, or credit (i.e. 'non-income item')

[9] *Soni v. Commissioner*, TC Memo 2021-137, December 1, 2021

[10] IRS Emailed Counsel Advice 202148006, December 3, 2021, https://www.taxnotes.com/research/federal/irs-private-rulings/e-mail-chief-counsel-advice/irs-advises-on-calculating-imputed-underpayments-of-partnerships/7cnk7 (retrieved December 4, 2021)

[11] IRS Emailed Counsel Advice 202148006, December 3, 2021

is always a positive adjustment. See 301.6225-1(d)(2) (definition of positive and negative adjustments)."[12]

The advice goes on to explain:

> Under BBA, all adjustments are adjustments and whether an adjustment is included in the IU calculation does not at all depend on whether/how/if the item would be taxed at the partner level. It only matters if we make a change to a "money number" (adjustments to "non-money numbers" like gallons for the fuel credit are always adjustments thakt do not result in an IU). If any adjustment is duplicative or included within another adjustment (ex. a reduction in an expense and an increase in assets if an item was expensed instead of capitalized), the IRS can treat one of those adjustments as zero, solely for purposes of calculating the IU, if it makes sense to do so in that case. See 301.6225-1(b)(4).[13]

The explanation provides the following examples of what would and would not be included in computing the IU:

> If you are adjusting the partnership's inside basis in its assets (i.e. the amounts on the Sch L of the Form 1065 and/or in its books and records), that is a non-income item adjustment and it would be a positive adjustment going into the calculation of the IU. A partner's outside basis in the partnership is not a PRI as it is not on the partnership return nor it is required to be maintained in the partnership's books and records. See 301.6241-1(a)(6)(iii). So if you want to adjust the partner's outside basis, that would be done outside of BBA…[14]

SECTION: 6221
UNDERLYING ENTITY TYPE, NOT EXEMPT VS. TAXABLE STATUS, DETERMINES IF AN ORGANIZATION IS AN ELIGIBLE PARTNER FOR PARTNERSHIP ELECTION OUT OF BBA AUDIT REGIME

Citation: IRS Emailed Counsel Advice 202147012, 11/26/21

The IRS clarified, in emailed counsel advice,[15] that it does not matter if a partner is a for profit or exempt organization to determine if that partner will bar the partnership from electing out of the regime under IRC §6221(b).

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[12] IRS Emailed Counsel Advice 202148006, December 3, 2021

[13] IRS Emailed Counsel Advice 202148006, December 3, 2021

[14] IRS Emailed Counsel Advice 202148006, December 3, 2021

[15] IRS Emailed Counsel Advice 202147012, November 26, 2021, https://www.irs.gov/pub/irs-wd/202147012.pdf (retrieved November 29, 2021)

The email is written in response to a question that is not disclosed in the document. However, it's fairly certain the question that was asked was whether a partnership that had a tax exempt partner could opt out of the BBA partnership audit regime when filing its return using the procedures found at IRC §6221(b)(1).

IRC §6221(b)(1) provides:

> (b) Election out for certain partnerships with 100 or fewer, etc.
>
> (1) In general
>
> This subchapter shall not apply with respect to any partnership for any taxable year if—
>
>> (A) the partnership elects the application of this subsection for such taxable year,
>>
>> (B) for such taxable year the partnership is required to furnish 100 or fewer statements under section 6031(b) with respect to its partners,
>>
>> (C) each of the partners of such partnership is an individual, a C corporation, any foreign entity that would be treated as a C corporation were it domestic, an S corporation, or an estate of a deceased partner,
>>
>> (D) the election—
>>
>>> (i) is made with a timely filed return for such taxable year, and
>>>
>>> (ii) includes (in the manner prescribed by the Secretary) a disclosure of the name and taxpayer identification number of each partner of such partnership, and
>>
>> (E) the partnership notifies each such partner of such election in the manner prescribed by the Secretary.

The email provides the following answer in response to the inquiry:

> Whether an entity is tax-exempt/not-for-profit or not has nothing to do with whether an entity is an eligible partner for purposes of election out under BBA. It solely depends on what type of entity the partner is. A tax-exempt/not-for-profit entity still has an entity type (e.g., C corp, etc).[16]

[16] IRS Emailed Counsel Advice 202147012, November 26, 2021