

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

JOHN CRIMI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 13252-09.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	

**ORDER AND DECISION**

On February 14, 2013, the Court filed its Memorandum Findings of Fact and Opinion, T.C. Memo. 2013-51 (Opinion), in the consolidated cases docketed at Nos. 13252-09, 13262-09, 20519-09, 22374-09, 22417-09, and 22531-09. We stated at the end of the Opinion that decisions will be entered under Rule 155<sup>1</sup>.

On April 15, 2013, respondent filed in each of these cases Respondent's Statement Concerning Rule 155 Computations in which respondent stated that the parties are in agreement as to the amount of the deficiency in each of the six consolidated cases. However, respondent also stated that the parties disagreed on respondent's proposed decision document in each of the following cases: Docket Nos. 13252-09, 22374-09, and 22531-09. Specifically, petitioners in these three cases declined to sign the proposed decision documents unless they included language regarding interest suspension under section 6404(g). On the same day, the Court also filed respondent's Rule 155 computations in each of these three cases. In addition, the Court filed the parties' agreed computations for entry of

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<sup>1</sup>Unless otherwise indicated, section references are to the Internal Revenue Code (Code) in effect for the year at issue, and Rule references are to the Tax Court Rules of Practice and Procedure.

decision under Rule 155 and signed decision documents in the following cases: Docket Nos. 13262-09, 20519-09, and 22417-09.

On June 11, 2013, the Court ordered the parties to each file a Memorandum of Points and Authorities addressing, among other things, whether we have jurisdiction over issues relating to interest suspension under section 6404(g). The parties timely did so.

Petitioner argues that we have jurisdiction over the issue relating to suspension of interest under section 6404(g) because the petition seeks our review of respondent's determinations made in the notice of deficiency, which petitioner believes includes a determination as to interest suspension under section 6404(g). In other words, the instant petition, as petitioner sees it, seeks our review of respondent's determination as to tax deficiency under section 6212 as well as respondent's purported determination as to interest suspension under 6404(g).

Other than the dispute over interest suspension, petitioner agrees that the parties are in agreement with respect to all other issues.

A notice from the Commissioner may include more than one determination and with a timely filed petition may confer independent grounds for jurisdiction. See Gray v. Commissioner, 138 T.C. 295, 305 (2012) (finding that a notice of determination included a determination under section 6330 and a determination under section 6404(e) that would confer independent grounds for jurisdiction if a petition is timely filed with respect to each determination).

But for the Court to have jurisdiction over the Commissioner's determinations, each of the determinations itself must be reviewable by this Court. Section 6404(g) requires the Commissioner to stop the accruing of interest if certain conditions are present. But we find no statutory grant of authority for the Court to review the Commissioner's failure to do so.

Section 6404(h) confers on the Court jurisdiction to determine whether "the Secretary's failure to abate interest under this section was an abuse of discretion." Sec. 6404(h) (emphasis added). Section 6404(d) and (e) provides the Commissioner the discretion to abate interest if certain conditions are met; these are the only references to the Commissioner's discretion to abate interest in section 6404. Surely, if Congress intended to grant the Court jurisdiction to review the Commissioner's decision not to suspend the accruing of interest, which is not

discretionary under section 6404(g), it would have clearly said so. See Goode v. Commissioner, T.C. Memo. 2006-48, 91 T.C.M. (CCH) 901, 905-906 (2006).

Accordingly, we lack jurisdiction over respondent's purported determination set forth in the notice of deficiency regarding suspension of interest under section 6404(g), and petitioner may not raise this issue in this deficiency proceeding. Based on the foregoing and petitioner's agreement that respondent's Rule 155 computation of deficiency accurately reflects the Court's findings in the above-referenced Opinion, it is

ORDERED AND DECIDED that there is a deficiency of \$39,880 in petitioner's 2004 Federal income tax.

**(Signed) David Laro  
Judge**

Entered: **JUN 21 2013**