

UNITED STATES TAX COURT

JOE CLIENT
JANE CLIENT

Petitioners,

versus

COMMISSIONER OF INTERNAL
REVENUE

Docket No. _____

Defendant,

PETITION - ADDENDUM

5. Explain why you disagree with the IRS determination in this case. - Continued

C. deficiency attributable for the aforementioned positions taken on Petitioners' 2010 Form 1040.

D. During the IRS audit of the 2010 tax return, the Petitioners produced credible evidence on the issues of fact and satisfied the other requirements for shifting the burden of proof to the Commissioner.

6. State the facts upon which you rely. – Continued

C. as follows: (i) 7/7/05 - Mrs. Client invested \$312,305 in the Griphon Long Term Fund from her Alaska Deferred Compensation Savings Plan; and (ii) 9/30/07 – Mr. Client invested \$222,190 in the Griphon Alpha 1 Fund from his Individual Retirement Account.

D. The account with Sterling Trust Company allowed Mr. Jawed (through his ownership of Griphon) to execute transactions within the aforementioned two accounts. Shortly after the Petitioners deposited the sums referenced in C. above, Griphon withdrew the cash and deposited limited partnership shares into Griphon Long Term Fund and Griphon Alpha 1 Fund.

E. Valuation of the limited partnership shares was premised on valuation information provided to Sterling Trust Company by Griphon on a quarterly basis.

F. As a result of non-payment of account fees for which Griphon was solely responsible, Sterling Trust Company closed the Petitioners' accounts and issued Form 1099-R's in 2010 stating that the Petitioners' value in the Griphon Long Term Fund was \$433,465, and the value in the Griphon Alpha 1 Fund was \$240,440. A review of Form 1099-R indicates that the Griphon assets were sold for a note receivable, which never actually transpired.

G. No cash, liquid funds or other form of investment asset was ever distributed by Sterling Trust Company to Petitioners.

H. In September, 2012, the Securities and Exchange Commission (“SEC”) filed a complaint in the U.S. District Court, District of Oregon (Case 3:12-cv-01696-HA), asserting that Griphon and its owner, Mr. Jawed were a “Ponzi scheme” started in 2002. The court documents assert “Jawed used the money entrusted by investors to pay off old investors, to pay himself, to travel, and to create an illusion of success and achievement.” Further, the complaint stated that Griphon began sending “. . . false and misleading statements to investors about the purported purchase of the funds’ alleged assets No such purchase ever occurred and the investors were never paid. To date, the SEC has been unable to locate any remaining assets to return to investors.

I. In March, 2013, the Department of Justice indicted Mr. Jawed based on the SEC complaint.

J. On April 16, 2013, Mr. Jawed plead guilty to all charges.

K. The Petitioners were subject to a correspondence audit as correspondence was received dated July 30, 2012, indicating the two Forms 1099-R were filed by Sterling Trust Company, but not reported on the Petitioners’ 2010 Form 1040.

L. The Petitioners responded to the July 30, 2012 letter by providing evidence that Griphon and Mr. Jawed deceived Petitioners into investing in a Ponzi scheme and all initial investment was lost.

M. On October 22, 2012, the IRS responded by stating “The law requires you to report your income correctly. If your payers did not send you a yearly income statement (Form W-2, Form 1099, etc.), you must use the information you have to estimate the total amount of income you received during the year.” The IRS concluded that the proposed assessment should stand.

N. On November 19, 2012, the Petitioners appealed the IRS denial of October 22, 2012. The Petitioners pointed out that the Forms 1099 were patently false, and that Petitioners estimate of taxable income was zero. The Petitioners argued that the IRS has a duty to investigate Sterling Trust’s Company’s bald assertion of payment to ascertain whether Sterling Trust Company’s position was supported by its internal accounting records. In essence, the Petitioners argued that in all matters of unreported income, the presumption of correctness does not attach to any proposed or actual deficiency if the IRS is unable to present evidence in support of such potential assessment.

O. The Petitioners perceive that they have come forward and presented sufficient credible evidence to the IRS that no distribution was ever made by Sterling Trust Company. Therefore, Petitioners have already produced credible evidence on the issue of fact and satisfied the other requirements for shifting the burden of proof to the Commissioner.

WHEREFORE, the Petitioners pray that this Court may try this case, determine that there are no deficiencies in income for the calendar year 2010, determine that no pre-mature distribution was issued from Petitioners’ retirement plans, determine that IRC Section 6662(d) is inapplicable, and give such other and further relief as the Court may deem fit and proper.