

T.C. Memo. 2013-73

UNITED STATES TAX COURT

THOMAS EUGENE SATKIEWICZ AND MARLENE KAY SATKIEWICZ,  
Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 27857-11L.

Filed March 12, 2013.

Thomas Eugene Satkiewicz and Marlene Kay Satkiewicz, pro sese.

Rebecca M. Clark, for respondent.

MEMORANDUM OPINION

CHIECHI, Judge: This case is before us on respondent's motion for summary judgment (respondent's motion). We shall grant respondent's motion.

Background

The record establishes and/or the parties do not dispute the following.

Petitioners resided in Michigan at the time they filed the petition.

[\*2] Petitioners filed a Federal income tax (tax) return for each of their taxable years 2003, 2004, 2005, 2006, and 2010. Petitioners did not pay any tax shown due in each of those returns.

After correcting certain mathematical errors, as defined in section 6213(g)(2),<sup>1</sup> that required the recalculation of the total tax and tax due for certain of petitioners' taxable years in question, respondent assessed on various dates tax and certain additions to tax, as well as interest as provided by law as of the respective dates of assessment, for petitioners' taxable years 2003, 2004, 2005, 2006, and 2010. (We shall refer to the respective amounts of tax, additions to tax, and interest that respondent assessed for each of petitioners' taxable years 2003, 2004, 2005, 2006, and 2010, as well as interest as provided by law accrued after the respective dates of assessment, as petitioners' unpaid liabilities at issue.)

On various dates, respondent issued to petitioners notices of balance due with respect to petitioners' unpaid liabilities at issue.

On July 28, 2011, respondent issued to each petitioner a notice of Federal tax lien filing and your right to a hearing under IRC 6320 (notice of tax lien) with respect to petitioners' unpaid liabilities at issue.

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<sup>1</sup>All section references are to the Internal Revenue Code in effect at all relevant times. All Rule references are to the Tax Court Rules of Practice and Procedure.

[\*3] Petitioners timely filed with respondent Form 12153, Request for a Collection Due Process or Equivalent Hearing (petitioners' Form 12153), and requested a hearing with respondent's Appeals Office (Appeals Office). In that form, petitioners indicated their disagreement with the notice of tax lien and claimed that they were unable to pay petitioners' unpaid liabilities at issue. Petitioners requested in petitioners' Form 12153 that respondent "discharge" the lien.<sup>2</sup> In support of their request, petitioners stated in pertinent part in an attachment to that form:

In November, 1992, I was downsized/rightsized from a job at Ameritech which I started on January 12, 1970. I was fired because of my age. I filed an Age Discrimination in Employment complaint with the Detroit Office of the Equal Employment Opportunity Commission (EEOC). The EEOC could not find age discrimination. The EEOC was given a video tape of the vice-president of Human Resources at Ameritech who stated on the video that the Downsizing/Rightsizing Action was done to remove the older workers and make room to hire younger workers.

Since 1966 to 2002, I paid my taxes. In 2002, I could no longer pay my taxes. It was better to feed, clothed, [sic] and provide shelter for my family, then [sic] pay my taxes. Since the Federal Government refused to protect me, which is a violation of the Implied Equal Protection of the Law Clause in the 5<sup>TH</sup> Amendment to the U.S. Constitution. In 1879, the U.S. Supreme Court, because of the Equal Protection Clause, ruled that the Government cannot enforce a law to my detriment, if the Government refuses to enforce a law to my

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<sup>2</sup>In petitioners' Form 12153, petitioners did not request as a collection alternative an installment agreement or an offer-in-compromise.

[\*4] benefit, and if this act by the Government causes me to violate the law, I can be held responsible for violating the law.

Now I am not refusing to pay taxes, but I cannot pay taxes, if I don't have a job. I cannot gain employment, if the EEOC doesn't enforce the Age Discrimination in Employment Act of 1967. Also since we have 12-20 Million Illegal Immigrants in U.S.A. the Federal Government is not protecting me, since the Federal Government is not enforcing our Immigration Laws.

You may claim that enforcement of the Age Discrimination in Employment Act of 1967 and Immigration Laws are not your responsibility, but you are wrong. The IRS, EEOC, and Homeland Security are all one government (U.S.A.). One Government means that the IRS can't treat citizens differently than the EEOC or Homeland Security treats citizens.

On November 15, 2011, a settlement officer with respondent's Appeals Office held a telephonic hearing (November 15, 2011 hearing) with petitioners.<sup>3</sup> During that hearing, petitioners advanced the following arguments: (1) the filing of the notice of tax lien violated the due process clause of the Fifth Amendment to the U.S. Constitution (Constitution) because that notice was filed before petitioners' hearing under section 6320(b) was held; (2) petitioners were not treated fairly under the equal protection clause of the Fourteenth Amendment to the Constitution because, according to them, the Government is prohibited from enforcing a law to petitioners' detriment where the Government refuses to enforce a law to

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<sup>3</sup>Petitioners did not request a face-to-face hearing.

[\*5] their benefit; and (3) the Department of Homeland Security is not protecting petitioners because it allows undocumented workers to work in the United States but the Internal Revenue Service is not attempting to require those undocumented workers to file tax returns and pay tax.

During the November 15, 2011 hearing, the settlement officer informed petitioners that all procedural and legal requirements had been satisfied before the filing of the notice of tax lien. The settlement officer also advised petitioners that they had been placed in a status known as currently not collectible and that therefore the notice of tax lien was appropriate.

On November 22, 2011, the Appeals Office issued to each petitioner a notice of determination concerning collection action(s) under section 6320 and/or 6330 (collectively, notices of determination) with respect to petitioners' unpaid liabilities at issue. Those notices stated in pertinent part: "The determination of Appeals is that the filed Notice of Federal Tax Lien is sustained."

The notices of determination included an attachment that stated in pertinent part:

**SUMMARY AND RECOMMENDATION**

You filed a request for a Collection Due Process hearing under Internal Revenue Code § 6320. \* \* \*

[\*6] Your hearing request listed I cannot pay balance as a collection alternative. Based on a review of the administrative case file, it is Appeals position that the lien filing was proper. It is our determination that the lien filing be sustained.

### **BRIEF BACKGROUND**

The liabilities for tax periods 2003, 2004, 2005, 2006 and 2010 are based on self assessed tax returns.

In the Settlement Officer's letter dated October 20, 2011, a telephone conference was scheduled for November 15, 2011 at 2:00pm EST. In that letter, you were offered an opportunity to request a face-to-face conference but no request was made.

During the scheduled telephone conference, the Settlement Officer advised you that her research indicates that all legal and procedural requirements were met prior to the filing of the Notice of Federal Tax Lien and that it was also appropriate because it was filed as a result of your account being placed in currently not collectible status. You disagreed with the filing of the Notice of Federal Tax Lien based on the following issues:

- It was a violation of the 5th amendment due process clause because it was filed prior to the hearing.
- You were not treated fairly under the Equal Protection Clause, which states the government cannot enforce a law to his detriment if the government refuses to enforce a law to his benefit.
- Homeland Security is not protecting him because they are allowing undocumented workers to take jobs and that the IRS is not going after these undocumented workers to file and pay taxes.

The Settlement Officer explained that the issues you raised do not have an impact on the filing of the Notice of Federal Tax Lien so she will proceed with the issuance of the determination letter.

[\*7] \* \* \* \* \*

**Issues raised by the taxpayer**

The reasons given for requesting the hearing is that he lost his job in 1992 due to age discrimination and filed an age discrimination complaint [sic] with the Equal Employment Opportunity Commission that was denied. In 2002, he was unable to pay his taxes and provide for his family. Now he is not refusing to pay but can't because he is unemployed and can't find a job.

**Collection Alternatives Offered by Taxpayer**

You requested the collection alternative of I cannot pay balance. Your account was placed in currently not collectible status on June 10, 2011.

**Challenges to the Existence of Amount of Liability**

You did not dispute your liability.

Although the NFTL cannot be withdrawn because the assessments are valid, I considered whether any of the criteria for allowing withdrawal of the lien existed in your case.

IRS § 6323(j) allows the withdrawal of a filed notice of lien without full payment and without prejudice under the following conditions:

- The filing of the notice of lien was premature or otherwise not in accordance with administrative procedures of the Internal Revenue Service:
- The taxpayer had entered into an installment agreement under IRC § 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise:
- Withdrawal of the lien will facilitate collection of the tax liability : or
- With the consent of the taxpayer or the National Taxpayer Advocate (NTA), the withdrawal of such notice

[\*8] would be in the best interest of the taxpayer (determined by the NTA of the taxpayer) and the United States.

There is nothing else in the Collection administrative file that indicates withdrawal of the filed lien should be considered and you have provided no additional information that indicates the withdrawal of the filed lien should be considered.

**Balancing of need for efficient collection with taxpayer concern that the collection action be no more intrusive than necessary.**

The Notice of Federal Tax Lien (NFTL) is necessary to protect the government's interest in your assets even if you encumber or sell them. Per IRC §6330(c)(3)(C), the NFTL balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

The filing of the Notice of Federal Tax Lien is sustained.

In the petition commencing this case, petitioners alleged in pertinent part:

The IRS put a lien on our home, before the Due Process hearing, which is a violation of our right to due process

The hearing officer represented the IRS and was the judge, so the hearing officer was not impartial

The hearing officer was not licensed to practice law, so did not understand the U.S. Constitution and 5TH Amendment

The IRS is treating me differently, then the EEOC treats employers who violate Age Discrimination in Employment Act

The IRS has violated the Age Discrimination in Employment Act, when the IRS failed to hire me.

The IRS fails to file liens against undocumented workers who don't file U.S. Income Tax.

Home Land Security fails to deport illegal aliens, because the illegal aliens have not committed any crimes.

\* \* \* \* \*

[\*9] The 5TH Amendments Due Process Clause  
The 5TH Amendments Equal Protection Clause  
Right to a fair and impartial judge [Reproduced literally.]

In an attachment to the petition, petitioners alleged:

The U.S. Government has violated my 5<sup>TH</sup> Amendment rights to Due Process and Equal Protection of Law. While the 5<sup>TH</sup> Amendment doesn't have an Equal Protection of Law clause, like the 14<sup>TH</sup> Amendment does, in 1954 Case of Bolling vs. Sharpe, Chief Justice Earl Warren placed the Equal Protection of Law clause in the 5<sup>TH</sup> Amendment's Due Process clause. Procedural Due Process requires that each side is able to fully present his side of things, whether that is a complaint or a defense, or any other relevant information. The sides must also be able to present their information in front of an impartial judge or jury who will listen fairly to each side. Equal Protection of Law provides the right of all persons to have the same access to the Law and Courts, and to be treated equally by the Law and Courts, both in procedures and in substance of the Law. It is akin to the right to Due Process of Law, but in particular applies to equal treatment as an element of fundamental fairness.

In July, 2011, the Internal Revenue Service (IRS) wanted to place a lien on my home for back Income Taxes, so in July, 2011, I asked the IRS for a Due Process hearing. In July, 2011, the IRS placed a lien on my home. On Tuesday (November 15, 2011) I had my Due Process hearing, and this is 4 months after the IRS placed a lien on my home. The hearing officer was Dawn Attivissimo who is not licensed to practice law and doesn't have any training in law. Also Ms. Attivissimo is employed by the IRS and represented the IRS in the Due Process hearing.

The Due Process hearing was not timely, fair, and impartial. The Due Process hearing was not timely, because it was held 4 months after the IRS placed a lien on my home. The Due Process hearing was not fair, because Ms. Attivissimo was both the IRS and the Judge. Ms. Attivissimo refused to discuss the Law, because as Ms. Attivissimo

[\*10] stated that it was not the purpose of this Due Process hearing, and also, Ms. Attivissimo stated that the U.S. Constitution and the 5<sup>TH</sup> Amendment was not relevant to my case. The Due Process hearing was not impartial, because Ms. Attivissimo started the Due Process hearing by stating that she (Ms. Attivissimo) read the file and she (Ms. Attivissimo) could not find that the IRS did anything wrong.

The 5<sup>TH</sup> Amendment to the U.S. Constitution guarantees me Equal Protection of Law. Equal Protection of Law means that the U.S. Government must enforce all Laws equally. As a victim of a crime (Age Discrimination in Employment) am I not entitled to protection of Law as are victims of others crimes? Should not the Equal Employment Opportunity Commission (EEOC) fully and properly investigate claims of Age Discrimination in Employment, as fully and properly as the IRS investigates citizens who violate the Tax Codes?

Why is the U.S. Government enforcing the Tax Codes against me when the U.S. Government fails to enforce U.S. Laws that would help me pay my U.S. taxes? Why is the U.S. Government treating me differently when I fail to pay my U.S. Income Taxes, than when I am a victim of a crime (Age Discrimination in Employment)? The reason that I failed to pay my taxes, is that my family and I are on welfare. The reason that my family and I are on welfare, is the EEOC failure to enforce the Age Discrimination in Employment Act of 1967. I am not opposed to paying taxes, because I paid my taxes for 41 years out of 45 years. The first order of business for government is to protect its citizens, but when I needed the U.S. Government's protection, the U.S. Government failed me.

The EEOC fails to enforce the Age Discrimination in Employment Act of 1967. I have not seen where the EEOC has promoted the hiring of older workers as stated in SEC. 621 [Section 2] paragraph b of the Age Discrimination in Employment Act of 1967 as stated below;

[\*11] SEC 621 [Section 2]

- (a) The Congress hereby finds and declares that
  - (1) In the face of rising productivity and affluence older workers find themselves disadvantaged in their efforts to retain employment and especially to regain employment when displaced from jobs.
  - (2) The setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise practices may work to the disadvantage of older persons.
  - (3) The incidence of unemployment especially long-term unemployment with resultant deterioration of skills, morale, and employer acceptability is, relative to the younger ages, high among older workers, their numbers are great and growing, and their employment problems grave.
  - (4) The existence in industries affecting commerce of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.
- (b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age, to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment

An EEOC investigation of Age Discrimination in Employment consist of the EEOC sending the complaint to the employer, then the employer responds by stating that the employer could not have age discriminated, because the employer has a policy against age discrimination in employment. The EEOC will close the case, because the employer has a policy against Age Discrimination in Employment. The Customs Border Protection (CBP) has failed to protect the U.S. borders from illegal entry. If the Customs Border Protection had protected the U. S. borders, there would not be 12 million illegal aliens in my country.

[\*12] The Immigration Customs and Enforcement has failed to enforce the U.S. Immigration Laws. If the Immigration Customs and Enforcement had enforced U.S. Immigration Laws, then there would not be 12 million illegal aliens working in my country. The Immigration Customs and Enforcement (ICE) will start to release illegal aliens who have not committed a violent crime, plus ICE will give the illegal alien a work permit. A job that I could do, but an illegal alien will have. The Department of Justice (DOJ) is suing several states (Alabama, Arizona, and Utah), because these states passed immigration laws. Had the CBP and ICE done the job (that they are paid to do) of keeping the illegal aliens out of my country, then these states would not have passed immigration laws. DOJ is wasting my tax dollars suing states for doing the U.S. Government's job. The IRS fails to enforce the U.S. Tax Codes against the undocumented workers (illegal aliens) or place a lien on the undocumented workers property for not paying back taxes. How would an undocumented worker pay taxes without documents (Social Security Number)? Also the IRS has violated the Age Discrimination in Employment Act of 1967 by refusing to hire me because of my age. A position that I have over 40 years of experience doing, and a Master Degree in Management and Supervision with a Bachelor Degree in Electrical Engineer. I wasn't even given an interview.

The 5<sup>TH</sup> Amendment doesn't have an Equal Protection of Law clause, but Chief Justice Earl Warren in a 1954 Case (Bolling vs. Sharpe 347 U.S. 497) placed it in the 5<sup>TH</sup> Amendment. The U.S. Supreme Court averred that it was absurd that the Constitution could deny the states the power to abridge equal protection of Laws, yet permit that power to the congress. "[T]he concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive," reasoned Chief Justice Earl Warren. The Court thus interpreted the 5<sup>TH</sup> Amendment's due process clause to include an equal protection element but has continued to hold that there is a difference between due process and equal protection in its 14<sup>TH</sup> Amendment jurisprudence.

[\*13] The U.S. Supreme Court has held that a government (U.S. or State) cannot treat Citizens differently, because we are all Citizens. This can be seen in the following cases; Strauder vs. West Virginia 1880, Yick Wo vs. Hopkins 1886, Brown vs. Board of Education 1954, Hernandez vs. Texas 1954, Reynolds vs. Sims 1964, and Wesberry vs. Sanders 1964. The U.S. Government is treating me (U.S. Citizen) differently as a victim of crime (Age Discrimination in Employment), then the U.S. Government treat victims of other crimes. [Reproduced literally.]

In an Order dated October 15, 2012 (October 15, 2012 Order), we ordered petitioners to file a response to respondent's motion.<sup>4</sup> In that Order, we also indicated that our review of the record suggested that petitioners may intend to advance in this case certain frivolous and/or groundless statements, contentions, arguments and/or questions. In the October 15, 2012 Order, we reminded petitioners about section 6673(a)(1) and admonished them that if they (1) advanced frivolous and/or groundless statements, contentions, arguments and/or questions and/or (2) instituted or maintained this proceeding primarily for delay, we would impose on them a penalty under section 6673(a)(1) in an amount not exceeding \$25,000.

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<sup>4</sup>Petitioners filed a response to respondent's motion before they received our Order dated November 15, 2012, ordering (1) respondent to file a supplement to respondent's motion and (2) petitioners to file after respondent filed that supplement a response to respondent's motion as supplemented. As a result, petitioners filed a response to respondent's motion and a response to respondent's motion as supplemented.

[\*14] About six weeks before the parties were required to file pretrial memoranda, petitioners filed their pretrial memorandum. In that pretrial memorandum, petitioners advanced essentially the same statements, contentions, arguments, and/or questions that they advanced in the petition and the attachment to the petition and that they advanced to the settlement officer during the November 15, 2011 hearing.

#### Discussion

The Court may grant summary judgment where there is no genuine dispute of material fact and a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). We conclude that there is no genuine dispute as to any material fact regarding the questions raised in respondent's motion.

Where, as is the case here, the validity of the underlying tax liability is not properly placed at issue, the Court will review the determination of the Commissioner of Internal Revenue for abuse of discretion. Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 182 (2000).

In both their response to respondent's motion and their response to respondent's motion as supplemented, petitioners advance, albeit in a summary fashion, essentially the same statements, contentions, arguments, and/or questions that they

[\*15] advanced in the petition and the attachment to the petition. Those statements, contentions, arguments, and/or questions are also essentially the same as what they made to the settlement officer during the November 15, 2011 hearing.

Based upon our examination of the entire record before us, we find that respondent did not abuse respondent's discretion in making the determinations in the notices of determination with respect to petitioners' unpaid liabilities at issue.

We consider sua sponte whether to impose on petitioners a penalty under section 6673(a)(1). Section 6673(a)(1) authorizes us to require a taxpayer to pay to the United States a penalty in an amount not to exceed \$25,000 whenever it appears to the Court, inter alia, that the taxpayer's position in a proceeding before us is frivolous or groundless. Sec. 6673(a)(1)(B).

Despite the admonition in our October 15, 2012 Order regarding section 6673(a)(1), petitioners persisted in advancing a position in this case that we find to be frivolous and/or groundless. Nonetheless, we shall not impose a penalty under section 6673(a)(1) on petitioners. We caution them that they may be subject to such a penalty if in the future they institute or maintain a proceeding in this Court primarily for delay and/or their position in any such proceeding is frivolous or groundless. See Abrams v. Commissioner, 82 T.C. 403, 409-413 (1984); White v. Commissioner, 72 T.C. 1126, 1135-1136 (1979).

[\*16] We have considered any of petitioners' contentions and arguments that are not discussed herein and that we do not find to be frivolous and/or groundless, and we find them to be without merit, irrelevant, and/or moot.

On the record before us, we shall grant respondent's motion.

To reflect the foregoing,

An order granting respondent's motion  
and decision for respondent will be entered.