

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ALVIN SHELDON KANOFSKY,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 21821-13 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is calendared on the Court's September 29, 2014, Washington, D.C., trial session. The IRS issued petitioner a Notice of Intent to Levy with respect to his unpaid tax liabilities for 2006 and 2007, and petitioner timely requested a collection due process (CDP) hearing at the IRS Appeals Office. A telephone CDP hearing with an IRS settlement officer (SO) was scheduled for August 14, 2013. According to respondent, petitioner did not answer the SO's call and failed to contact the SO by phone or mail after the scheduled hearing. On August 20, 2013, the SO closed the case and the IRS issued petitioner a Notice of Determination sustaining the proposed levy. Petitioner timely sought review in this Court.

On July 29, 2014, the IRS filed a Motion for Summary Judgment. This motion contends that (1) petitioner cannot challenge his underlying tax liabilities for 2006 or 2007 because he previously litigated those liabilities unsuccessfully in this Court, whose decision is now final; and (2) the SO did not abuse her discretion in sustaining the levy because petitioner failed to provide any financial information or participate in the CDP hearing. Respondent further contends that petitioner has instituted these proceedings primarily for the purpose of delay and that his position in this case is frivolous and groundless. Respondent therefore asks that the Court impose a penalty in an appropriate amount pursuant to I.R.C. § 6673. The IRS contends that there are no disputed issues of fact on these points; that no trial is necessary; and that the IRS is entitled to judgment as a matter of law. In consideration of the foregoing, it is

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ORDERED that, on or before September 2, 2014, petitioner shall file with the Court and serve on IRS counsel a response to the IRS Motion for Summary Judgment. If petitioner disagrees with the facts set out in the motion, petitioner should point out the specific facts in dispute. If petitioner disagrees with respondent's argument as to the law, then the response should also set out petitioner's position on the disputed legal issues. The Court has prepared a set of Q&As on the subject, "What is a Motion for Summary Judgment? How should I respond to one?" These Q&As are available at: ustaxcourt.gov/taxpayer_info_start.htm#START40. These Q&A are also reprinted on the page attached to this order.

Petitioner should note that, under Tax Court Rule 121(d), judgment may be entered against a party who fails to respond to a Motion for Summary Judgment. Petitioner is further warned that if he advances frivolous, irrelevant, or groundless arguments in response to the IRS Motion for Summary Judgment, the risk that the Court will impose a penalty under I.R.C. § 6673, and the magnitude of the possible penalty, will increase.

**(Signed) Albert G. Lauber
Judge**

Dated: Washington, D.C.
July 31, 2014

What is a motion for summary judgment? How should I respond to one?

1. **The motion.** A motion for summary judgment requests a ruling from a judge on some or all of the issues in a case before trial. If a motion for summary judgment is filed, the judge will review the documents submitted by the parties and consider whether the case can be decided without a trial. The party filing the motion must show that there is no genuine dispute of any important fact and that the party filing the motion is entitled to judgment in their favor as a matter of law. See Rule 121.

Your response. If the Court orders you to file a response to a motion for summary judgment, your response must: specify which factual statements in the motion for summary judgment you dispute, state what you contend the actual facts are, and cite the specific evidence that you rely on to support your factual contentions. That is, you must do more than deny or disagree with the motion. Instead, you must set forth specific facts that establish there is a factual dispute and that a trial is necessary to resolve that dispute. It is not enough merely to claim that a fact is in dispute. You must support your claim that there is a question about a material fact (or facts) by submitting with your response the evidence you rely on.

Your evidence. Your supporting evidence may include your own sworn affidavit or unsworn declaration given under penalty of perjury (Form 18, Unsworn Declaration under Penalty of Perjury). Your declaration can state facts about which you have personal knowledge. If your evidence includes documents, then you should submit those with your response (preferably numbered as Exhibits), and your declaration should identify and authenticate those documents. Your supporting evidence may also include other affidavits, stipulations, admissions, answers to interrogatories, or deposition transcripts.

Legal disputes. A motion for summary judgment may involve not only factual disputes but also legal disputes. If you disagree with the IRS's explanation of the law that applies to your case, you should explain your disagreement and cite the statutes, regulations, or other authorities that apply to your case.

Failure to respond. If the IRS files a motion for summary judgment in your case and the Court orders you to file a response, then failure to file a response may be grounds for granting the motion. See Rules 121(d) and 123(b).

Results of summary judgment. If a motion for summary judgment is granted in favor of the IRS, then there will be no trial, and a judgment will be entered against you.