

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

JOSEPH N. RYAN,)	
)	
Petitioner,)	
)	
v.)	Docket No. 13473-15 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER AND DECISION

This is a collection review case involving a proposed levy to collect petitioner’s outstanding Federal income tax liability for the taxable (calendar) year 2011. Pending before the Court is respondent’s Motion For Summary Judgment, filed March 25, 2016. Petitioner filed a Response to respondent’s motion on April 18, 2016, objecting to its granting. Thereafter this matter was assigned to the undersigned.

Background

Petitioner listed his address on the Petition filed to commence this case as RR1, Box 242, Bremen, Ohio 43107 (hereinafter, the Bremen, Ohio address). Such address has remained petitioner’s address-of-record throughout this case.

On September 16, 2013, respondent sent petitioner a notice of deficiency for 2011. In the notice respondent determined a deficiency of \$2,047 and an accuracy-related penalty under Internal Revenue Code (I.R.C.) section 6662(a) of \$409 based on the failure to report income from Social Security benefits paid to

petitioner of \$11,966.00.¹ The notice of deficiency was sent to petitioner by certified mail addressed to him at the Bremen, Ohio address and was delivered at that address. However, petitioner did not commence an action for redetermination challenging the notice of deficiency. Accordingly, on April 28, 2014, the determined deficiency and penalty, as well as statutory interest, were assessed and notice and demand for payment was made.

After the amount owing remained unpaid, respondent sent petitioner a Final Notice/Notice Of Intent To Levy And Notice Of Your Right To A Hearing on September 8, 2014. In response, petitioner timely filed a Request For A Collection Due Process Or Equivalent Hearing (Form 12153) challenging the existence or amount of the underlying liability and also requesting a collection alternative in the form of an offer-in-compromise.

The basis for petitioner's challenge to the existence or amount of the underlying liability appears in a letter from him to respondent dated September 11, 2014, wherein he states: "Recently I discovered a sentence in my Social Security award letter -(copy enclosed, with the sentence highlighted), stating that I may keep ALL of my benefits - no matter how much I earn." (Emphasis in the original.) The award letter, which advised petitioner that his Social Security benefits would increase in 2013, provided in pertinent part as follows:

What If I Worked In 2012?

If you were "full" retirement age or older (born in 1945 or earlier) throughout the year, you may keep all of your benefits no matter how much you earn. But, if you were younger than full retirement age (born in 1946 or later) at any time during the year, there is a limit to how much you can earn before your benefits are reduced.

• If you were younger than full retirement age all year in 2012, the earnings limit was \$14,640. We must deduct \$1 from your benefits for each \$2 you earned over \$14,640.

• If you reached full retirement age during 2012, the earnings limit was \$38,880. We must deduct \$1 from your benefits for each \$3 you earned over \$38,880 until the month you turned age 66.

¹ Respondent determined that Social Security benefits of \$17,560 were paid to petitioner, of which \$11,966 was the taxable amount.

What If I Work In 2013?

The earnings limit for workers who are younger than “full” retirement age will be \$15,120. The earnings limit for people turning 66 in 2013 will be \$40,080. Your benefits will be reduced if you earn more than these limits. If you expect to earn more in 2013, you should tell us right away so we can pay you correctly. This does not mean you must try to limit your earnings. If we withhold some of your benefits because you continue to work, we will pay you a higher monthly benefit amount when you reach your full retirement age. There is no limit on earnings if you are full retirement age or older for the entire year. [Emphasis added.]

Although petitioner requested a collection alternative in the form of an offer-in-compromise, he never proposed anything specific, nor did he provide requisite financial information sufficient for the settlement officer to evaluate such a collection alternative. In contrast, the settlement officer proposed a so-called streamlined installment payment arrangement of \$85 per month, but petitioner declined to accept the proposal.

The administrative hearing process culminated in the issuance of a Notice Of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated May 5, 2015, which sustained the proposed levy. The Attachment to the notice of determination included the following paragraphs:

On April 4, 2015 the SO received a letter from you and attached was a copy of a letter in reference to your Social Security benefits. You highlighted the section which states “If you were full retirement age or older (born in 1945 or earlier) throughout the year, you may keep all of your benefits no matter how much you earn”. Although you are entitled to keep all of your Social Security benefits regardless of other income earned, the benefits become taxable when you earn over a certain amount of income in a given year. Enclosed are the instructions and the worksheet you should use to determine if your Social Security benefits are taxable. These instructions are for tax year 2012 but are applicable for every year in which you receive Social Security benefits and other income.

* * * * *

The taxpayer offered a collection alternative of an Offer in Compromise. No offer was submitted. The Settlement Officer proposed an installment agreement which, to date has been declined.

* * * * *

It was determined that the taxpayer is precluded from raising the liability issue in this hearing. The Statutory Notice of Deficiency was delivered to the taxpayer[] which precludes [him] from raising the issue in this hearing. An explanation was provided to the taxpayer[] regarding the taxability of [his] Social Security benefits.

In response to the notice of determination, petitioner timely commenced the present action. Petitioner continues to challenge the existence or amount of his underlying liability but raised no other issue. Thus, in his Amended Petition he references his Social Security benefit statement and alleges:

It states that I may keep “all” of my benefits no matter how much I earn. To me, (when I turned 70 years of age) I was overjoyed to learn that I no longer had to pay taxes on these benefits.” [Emphasis in the original.]

Discussion

A. Petitioner’s Underlying Liability

I.R.C. section 6330(c)(2)(B) permits a taxpayer to challenge his or her underlying liability only if the taxpayer did not receive a notice of deficiency or did not otherwise have an opportunity to dispute such tax liability.

In the present case the record demonstrates that respondent sent petitioner a properly addressed notice of deficiency for 2011 and that such notice was delivered to petitioner’s Bremen, Ohio address. Hence, petitioner had an opportunity to dispute the deficiency and accuracy-related penalty by commencing an action for redetermination of deficiency and penalty. Petitioner failed to do so, however, and is therefore statutorily barred from challenging his liability in the present collection review case.

But even if petitioner were not so statutorily barred, it is clear that his argument is unavailing because he misunderstands the meaning of the Social Security benefit statement that he so heavily relies on. The statement deals only with what happens when a worker continues to work while receiving Social Security benefits. In other words, depending on a worker's age, the worker's Social Security benefits may be reduced if the worker earns above a prescribed amount; however, after attaining a certain age a worker will receive the worker's full benefit regardless of the amount earned. In short, the Social Security benefit statement that petitioner relies on has nothing to do with the taxability of Social Security benefits; indeed, the word "tax" or "taxable" does not even appear. Rather, section 86 of the Internal Revenue Code determines the extent to which Social Security benefits may be taxable.

B. Collection Alternative

Petitioner did not raise any issue in his pleadings regarding a collection alternative. Thus, any such issue is deemed to be conceded. See Tax Court Rule 331(b)(4), stating that "Any issue not raised in the assignments of error shall be deemed to be conceded." Regardless, the law is clear that a settlement officer does not abuse his or her discretion in declining to allow a collection alternative such as an offer-in-compromise if the taxpayer fails to make a specific proposal or fails to provide requisite financial information essential to a determination. But in any event, the record indicates that the settlement officer did propose a so-called streamlined installment payment arrangement of \$85 per month that petitioner declined to accept.

Conclusion

In order to give effect to the foregoing, it is hereby

ORDERED that respondent's Motion For Summary Judgment, filed March 25, 2016, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the proposed collection action (levy) in respect of petitioner's outstanding liability for Federal income tax for 2011, as determined in the Notice Of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated May 5, 2015, upon which notice this case is based.

**(Signed) Robert N. Armen, Jr.
Special Trial Judge**

Entered: **MAY 27 2016**