

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

ALLIED ADJUSTMENT SERVICES,)
INC.,)
)
Petitioner,)
)
v.) Docket No. 23849-14 L.
)
COMMISSIONER OF INTERNAL)
REVENUE,)
)
Respondent.)

ORDER OF DISMISSAL

These related collection due process (CDP) cases are before the Court to decide on respondent's Motion to Dismiss on Grounds of Mootness, filed July 14, 2016, in Docket No. 28116-12L, and respondent's Motion to Dismiss on Grounds of Mootness, filed July 15, 2016, in Docket No. 23849-14L, and July 20, 2016, in Docket No. 12037-13L, pursuant to Rule 53 of the Tax Court Rules of Practice and Procedure.¹ In support of these motions, respondent states that, subsequent to the filing of the petitions in these cases, petitioner paid in full its outstanding liabilities for the taxable years and quarterly periods at issue, and that consequently the applicable proposed levies are no longer necessary and the applicable notices of federal tax lien have been released.² As a result, respondent contends that we lack

¹Also pending before the Court are respondent's Motion for Summary Judgment, filed August 21, 2013, in Docket No. 28116-12L, and respondent's Motion for Summary Judgment, filed August 25, 2015, in Docket No. 23849-14L. The Court's Order to Show Cause, dated July 18, 2016, in Docket No. 28116-12L also remains pending.

²In Docket No. 28116-12L, petitioner's Form 1120 income tax liability for the 2010 taxable year, Form 940 employment tax liabilities for the taxable years 2006-2009, and Form 941 employment tax liabilities for the quarterly periods ending December 31, 2008 and December 31, 2010 are at issue. In Docket No. 12037-13L, petitioner's Form 941 employment tax liabilities for the quarterly (continued...)

any further basis for review under sections 6320 and 6330, and should dismiss these cases as moot.

Petitioner objects to the granting of these motions, but does not dispute that it recently paid in full the aforementioned liabilities. Petitioner instead argues that it only did so to halt the accrual of interest, and that the basis for her petitions in this Court -- i.e., that respondent's alleged failure to address the improper application of prior tax payments and the cascading penalties resulting therefrom -- has not been resolved. Consequently, petitioner contends that her cases are not moot and asks this Court to deny respondent's motions and to adjudicate her cases.

Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Background

These cases have a somewhat lengthy history. On November 19, 2012, petitioner timely filed its petition in Docket No. 28116-12L, disputing a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 it received regarding delinquent Form 940 employment tax liabilities for the taxable years 2006-2009, delinquent Form 941 employment tax liabilities for the quarterly periods ending December 31, 2008 and December 31, 2010, and a delinquent Form 1120 income tax liability for the 2010 taxable year. This notice reflected respondent's determination that petitioner did not meet any of the criteria for withdrawal of the notices of federal tax lien under section 6323(j), that the filing of the notices of federal tax lien with respect to petitioner's 2010 taxable year and quarterly periods ending December 31, 2008 and December 31, 2010 was sustained, and that the proposed levy action with respect to petitioner's taxable years 2006-2010 and quarterly periods ending December 31, 2008 and December 2010 was sustained.

On May 29, 2013, petitioner timely filed its petition in Docket No. 12037-13L, disputing a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 it received regarding delinquent Form 941 employment

²(...continued)

periods ending December 31, 2011 and June 30, 2012 are at issue. In Docket No. 23849-14L, petitioner's Form 941 employment tax liability for the quarterly period ending March 31, 2013 is at issue.

tax liabilities for the quarterly periods ending December 31, 2011 and June 30, 2012. This notice reflected respondent's determination that the filing of the notice of federal tax lien with respect to petitioner's quarterly period ending December 31, 2011 and the proposed levy action with respect to petitioner's quarterly periods ending December 31, 2011 and June 30, 2012 was sustained.

The case at Docket No. 12037-13L was called from the calendar for the Trial Session of the Court in Atlanta, Georgia, on March 24, 2014. Following a trial on March 27, 2014, the Court issued a bench opinion and, on April 28, 2014, ordered the case remanded to respondent's Office of Appeals (Appeals) to conduct a supplemental administrative hearing to properly consider petitioner's then current financial information to determine petitioner's reasonable collection potential. A telephonic supplemental hearing was held on July 15, 2014, following which Appeals issued a Supplemental Notice of Determination denying petitioner's proposed offer in compromise and again sustaining the proposed collection actions.

Petitioner timely filed its petition in Docket No. 23849-14L on October 7, 2014, disputing a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 it received regarding a delinquent Form 941 employment tax liability for the quarterly period ending March 31, 2013. This notice reflected respondent's determination that petitioner's proposed offer in compromise was rejected, that petitioner did not meet any of the criteria for withdrawal of the notice of federal tax lien under section 6323(j), and that the filing of the notice of federal tax lien was sustained.

The cases in Docket Nos. 12037-13L and 23849-14L were called from the calendar for the Trial Session of the Court in Atlanta, Georgia, on October 26, 2015, and consolidated by the Court on its own motion and tried that same day. Following trial, by order of the Court, the parties submitted seriatim briefs.

The parties having submitted their briefs in Docket Nos. 12037-13L and 23849-14L, respondent now moves to dismiss these cases, as well as the case in Docket No. 28116-12L, on grounds of mootness. Attached to respondent's motions are certified copies of account transcripts for the applicable taxable years and quarterly periods at issue. The transcripts reflect that petitioner fully paid its outstanding liabilities for those years and periods as of April 19, 2016, and that all of the accounts currently carry a zero or negative balance. The transcripts also reflect that respondent removed the liens applicable to each taxable year and quarterly period as of either May 13 or May 27, 2016.

Petitioner filed an objection to respondent's motions in Docket Nos. 12037-13L and 23849-14L on July 27, 2016, and in Docket No. 28116-12L on August 8, 2016, stating in part:

The above referenced actions were filed on the basis of abuse of discretion in that the Respondent failed at all meetings to address the basic concern of fairness of the application of payments and over assessment of penalties which resulted in cascading penalties and inflated the debt of Petitioner. To date these failures of proper payment application and cascading penalties have not been addressed by Respondent. Therefore, the basis for the case, failure by Respondent to address improper application of payments and cascading penalties caused by this failure, has not been resolved and is not moot.

The fact that Petitioner has elected, as is [its] right, to pay the amounts demanded by Respondent was in reaction to the speed with which the purported debt continued to rise due to the application of interest, while pursuing redress in US Tax Court. * * * Petitioner has determined that in order to stay the growth of the debt, it was in Petitioner's best interest to pay the amounts demanded and seek refunding of overpaid amounts through the cases stipulated in US Tax Court.

Nothing in Petitioner's action should be construed as agreeing to the amount, methods, or actions of Respondent. * * *

Discussion

This Court is a court of limited jurisdiction. Sec. 7442; Naftel v. Commissioner, 85 T.C. 527, 529 (1985). We may exercise jurisdiction only to the extent provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). Sections 6230(c) and 6330(d) confer jurisdiction on this Court to review lien and levy determinations of Appeals when the conditions set forth in those sections, as applicable, have been met. See Rule 330(b).

The lien and levy determinations of Appeals must take into consideration: (1) the verification that the requirements of applicable law and administrative procedure have been met; (2) issues raised by the taxpayer, including spousal defenses, challenges to the appropriateness of the collection action and offers of

collection alternatives; (3) challenges raised by the taxpayer as to the existence and amount of the underlying tax liability if the taxpayer did not receive a statutory notice of deficiency for, or otherwise have an opportunity to dispute, the underlying tax liability; and (4) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection be no more intrusive than necessary. Secs. 6230(c), 6330(c)(3); see also Lunsford v. Commissioner, 117 T.C. 183, 184 (2001).

Under this statutory framework, where the underlying tax liability is properly at issue, we review that issue de novo; where the underlying tax liability is not at issue, we review Appeals' determination for abuse of discretion -- that is, whether the determination was arbitrary, capricious, or without a sound basis in fact or law. See Murphy v. Commissioner, 125 T.C. 301, 308 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Freije v. Commissioner, 125 T.C. 14, 23 (2005); Lunsford v. Commissioner, 117 T.C. at 185; Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 182-183 (2000). In reviewing for an abuse of discretion, we generally consider only arguments, issues or other matters that the taxpayer raises during the CDP hearing or otherwise brings to the attention of Appeals. Murphy v. Commissioner, 125 T.C. at 308; Magana v. Commissioner, 118 T.C. 488, 493 (2002).

Given the limitations on our jurisdiction in lien and levy actions under section 6230(c) and 6330(d), the relief that we can provide to a petitioner in adjudicating such actions is limited, amounting to giving a "thumbs-up or thumbs-down" on whether respondent may proceed with the collection action in question. If we find that the existence and amount of the underlying tax liability is correct and Appeals' determination did not constitute an abuse of discretion, we may uphold the determination and sustain the collection action. If we find that the existence and amount of the underlying tax liability is incorrect or that Appeals' determination constituted an abuse of discretion because of Appeals' failure to consider relevant information or for some other reason, we may, as the Court did earlier in Docket No. 12037-13L, remand the case for further consideration by Appeals, or reject Appeals' determination and overrule the collection action. See Freije v. Commissioner, 125 T.C. at 33, 37.

As a result, if subsequent to the filing of a petition in this Court commencing a lien and levy action under section 6230(c) and 6330(d), respondent no longer intends to pursue collection of the outstanding tax liability by levy and has released the applicable lien, then there is no further relief that we are able to grant under sections 6320 and 6330 and the case must be dismissed as moot, even if the

petitioner maintains some dispute regarding the propriety of the liability. See Greene-Thapedi v. Commissioner, 126 T.C. 1, 8 (2006) (“[W]hatever right petitioner may have to challenge the existence and amount of her underlying tax liability in this proceeding arises only in connection with her challenge to the proposed collection action.”); see also Willson v. Commissioner, 805 F.3d 316, 319-321 (D.C. Cir. 2015) (“[I]f a case raises a question within the jurisdictional purview of the tax court, and that question is subsequently resolved, the case is moot notwithstanding the existence of other live controversies between the taxpayer and the IRS that do not fall within the tax court’s jurisdiction”); Kelby v. Commissioner, 130 T.C. 79, 84-85 (2008); Gerakios v. Commissioner, T.C. Memo. 2004-203; Chocallo v. Commissioner, T.C. Memo. 2004-152. And to that end, we lack jurisdiction in a lien and levy action under sections 6320(c) and 6330(d) to determine any overpayment or to order a refund or credit. Greene-Thapedi v. Commissioner, 126 T.C. at 11-13.

Because petitioner does not dispute that it has paid in full the outstanding liabilities for the taxable years and quarterly periods at issue in these cases and respondent has released the liens for the applicable years and periods and no longer needs, nor intends, to levy to collect petitioner’s liabilities for the applicable taxable years and quarterly periods, there is no longer any basis for us to exercise jurisdiction over these cases and we must dismiss them. Despite the fair amount of time that both petitioner and respondent, as well as this Court, have spent in dealing with these cases up to this point, we now lack the power to grant petitioner the relief that it still seeks. Its remedy lies elsewhere, first in filing a refund claim with respondent (see sec. 7422) and, if that is unsuccessful, instituting a tax refund suit in traditional refund fora -- the district courts of the United States (see 28 U.S.C. sec. 1346(a)(1)) or the United States Court of Federal Claims (see 28 U.S.C. sec. 1491(a)(1)).

In light of the foregoing and upon due consideration, it is hereby

ORDERED that respondent’s Motion for Summary Judgment, filed August 21, 2013, in Docket No. 28116-12L, and respondent’s Motion for Summary Judgment, filed August 25, 2015, in Docket No. 23849-14L, are denied as moot. It is further

ORDERED that the Court’s Order to Show Cause, dated July 18, 2016, in Docket No. 28116-12L, is discharged. It is further

ORDERED that respondent's Motion to Dismiss on Grounds of Mootness, filed July 14, 2016, in Docket No. 28116-12L, and respondent's Motion to Dismiss on Grounds of Mootness, filed July 15, 2016, in Docket No. 23849-14L, and July 20, 2016, in Docket No. 12037-13L, are granted, and these cases are dismissed as moot. It is further

ORDERED that the Clerk of the Court is directed to change petitioner's address of record in Docket Nos. 12037-13L and 23849-14L to 2604 Canopy Lane, Marietta, Georgia 30066.

**(Signed) Tamara W. Ashford
Judge**

ENTERED: **AUG 17 2016**