

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

RONALD KENNETH GREENHALGH,)
)
Petitioner(s),)
)
v.) Docket No. 16323-15SL.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)
)

ORDER OF DISMISSAL

This collection review case is before the Court on respondent’s Motion to Dismiss on Grounds of Mootness, filed on October 6, 2017, pursuant to Rule 53.¹ On June 24, 2015, petitioner timely filed a petition requesting that the Court review the Internal Revenue Service’s (IRS) notice of determination sustaining the proposed levy to collect petitioner’s unpaid Federal income tax liability for 2010. Respondent moves that this case be dismissed as moot because “subsequent to the filing of the petition the underlying tax liability for the tax period in dispute has been satisfied and the proposed levy is no longer necessary.” Respondent attached to his motion a copy of Form 4340, Certificate of Assessments, Payments, and Other Specified Matters, for petitioner’s 2010 taxable year. The Form 4340 reflects that (1) the IRS applied overpayments from petitioner’s 2005, 2006, 2007, 2009, 2011, and 2012 taxable years to satisfy his 2010 liability and (2) the current account balance is zero. Petitioner objects to respondent’s motion.

On November 6, 2017, a hearing was held on respondent’s motion. The parties appeared and were heard. Petitioner’s Opposition was filed on November 6, 2017. In his Opposition petitioner does not contest that the underlying liability for 2010 has been satisfied; instead, he disputes how the IRS applied the overpayments from his other taxable years to his 2010 liability and also asserts that he is entitled to an overpayment for taxable year 2010.

¹Unless otherwise indicated, subsequent 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.

Discussion

The Tax Court is a Court of limited jurisdiction. Sec. 7442. The Court may exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). The Court has jurisdiction to review all notices of determination issued pursuant to section 6330. Sec. 6330(d)(1); McNeill v. Commissioner, 148 T.C. __, __ (slip op. at 11-12) (June 19, 2017).

In Greene-Thapedi v. Commissioner, 126 T.C. 1 (2006), in a reviewed opinion the Court held that: (1) the taxpayer's challenges to the Commissioner's collection action (a proposed levy) were moot because there was no unpaid tax liability upon which a levy could be based and the Commissioner would not take any further collection action; (2) this Court lacks jurisdiction in a lien or levy case (collection review case) to determine an overpayment or to order a refund or credit of taxes; and (3) the taxpayer's case should be dismissed as moot. Accordingly, the Court entered an order of dismissal.

Whatever right petitioner may have to challenge the existence or amount of his underlying liability for 2010 in the instant proceeding arises only in connection with his challenge to the proposed collection action. Greene-Thapedi v. Commissioner, *supra* at 8. Because the proposed levy is moot, petitioner has no independent basis to challenge the existence or amount of his underlying liability in the instant proceeding and we need not consider that matter. Id.

Petitioner made a number of assertions, including that he "filed the 2010 tax return on April 15, 2014, which is within the three year period allowed to claim a refund * * * [p]etitioner's return was not filed late" and that respondent should abate his "Late Filing Penalty" to zero.² We do not consider these assertions to be relevant to the issue before us. Nevertheless, we take this time to address some of these assertions. The record reflects that petitioner has repeatedly filed delinquent Federal income tax returns, including his 2010 return. Petitioner confuses the due date for filing a claim for a refund with the due date for filing an income tax return. A taxpayer seeking a credit or refund of overpaid taxes ordinarily must file a timely claim for a refund with the IRS that meets the requirements of section 6511.³ The due date for filing a Federal income tax return is separate and distinct; absent an extension, a Federal income tax return "shall be filed on or before the 15th day of April following the close of the calendar year". Secs. 6072, 6081. With a six-month extension, an individual taxpayer's Federal income tax return is due the 15th day of October following the taxable year; since petitioner filed a request for an extension, his 2010 return was due October 15, 2011. See secs. 6072, 6081.

²The record reflects that petitioner's 2010 income tax return was filed on June 23, 2014, and the IRS assessed (1) a sec. 6651(a)(1) addition to tax for failure to timely file and (2) a sec. 6651(a)(2) addition to tax for failure to timely pay income tax. On August 29, 2016, the IRS partially abated the additions to tax and interest.

³Section 6511(a) generally limits the amount of a refund to amounts paid within three years from the time the return is filed or two years from the time the tax was paid, whichever period expires later.

Finally, we note that section 6402(a) authorizes the IRS to offset an overpayment (here, for tax year 2010) against “any liability in respect of an internal revenue tax on the part of the person who made the overpayment”. The regulations provide that a taxpayer may instruct the IRS to apply an overpayment against his estimated tax for the immediately succeeding tax year. See sec. 301.6402-3(a)(5), *Proced. & Admin. Regs.* The regulations make it clear that a taxpayer’s election to apply an overpayment to a succeeding year is not binding on the IRS and authorizes the IRS to override such an instruction and apply the overpayment against “any outstanding liability for any tax.” Sec. 301.6402-3(a)(6)(i), *Proced. & Admin. Regs.*; see also Weber v. Commissioner, 138 T.C. 348, 356-357 (2012). This is what the IRS did, and is statutorily authorized to do so, notwithstanding petitioner’s desire that the overpayments from his other tax years be applied to some year other than tax year 2010.

Upon due consideration, it is

ORDERED that respondent’s Motion to Dismiss on Grounds of Mootness, filed October 6, 2017, is granted, and this case is dismissed on the ground that petitioner’s tax liability for taxable year 2010 has been paid in full and respondent’s proposed levy for that year is no longer necessary.

(Signed) Peter J. Panuthos
Special Trial Judge

ENTERED: **NOV 15 2017**