UNITED STATES TAX COURT
WASHINGTON, DC 20217

PETER EDWARD SCHALLER & CATHERINE JOANNE SCHALLER,	)	
Petitioners,	)	
v.	)	Docket No. 7318-17.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

ORDER AND DECISION

This matter is before the Court on respondent's Motion For Summary Judgment, filed December 21, 2017. Respondent seeks to sustain a notice of deficiency issued to petitioners with respect to the 2015 taxable year.

There are no genuine issues of material fact in this case and the Court concludes that respondent is entitled to judgment as a matter of law as provided herein.

Petitioners resided in Iowa at the time that the petition in this proceeding was filed with the Court.

Background

Notice of Deficiency and Pleadings

Petitioners timely filed a joint Federal income tax return for the taxable (calendar) year 2015. Therein petitioners reported $27,236 in taxable military retirement pay, $1,063 in associated Federal income tax withheld, $663 in tax due, and $400 as a requested refund amount. Petitioner' 2015 return was subsequently selected for examination, which culminated in the issuance on March 20, 2017, of the notice of deficiency on which the present case is based. In the notice of deficiency, respondent determined that petitioners had failed to report (1) wages in the amount of $9,078 from the City of Sioux City, Iowa, and (2) unemployment compensation in the amount of $1,040 from the Iowa Workforce Development UIS Division, and had failed to

claim $80 in tax withheld in connection with the Sioux City wages. Such amounts had been reported to respondent on information returns filed by the third-party payers.

On April 3, 2017, petitioners filed a petition with the Court with respect to the March 20, 2017 notice of deficiency. The petition took the position that "both the Sioux City Finance Office and Iowa Workforce Development Civil Service Employees shall bear full responsibility, both fiduciary and pecuniary accountiability [sic] and responsibility for their failure to do the jobs that they are getting paid to do!" Petitioners then went on to chronicle their efforts to ensure that requisite Federal and State income taxes were withheld by Sioux City and Workforce Development, including multiple trips to the respective offices. Notably, the petition did not dispute receipt of the determined income. Respondent's answer to the petition followed on May 19, 2017.

Subsequent Tax Court Proceedings

Respondent then filed the Motion For Summary Judgment presently before the Court on December 21, 2017, accompanied by a supporting declaration, memorandum, and exhibits. By Order dated December 22, 2017, petitioners were directed to file an objection, if any, to respondent's motion on or before January 12, 2018. To date, nothing has been received from petitioners.

Discussion

Summary Judgment Standard

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment on all or any part of the legal issues in controversy. Rule 121(a).[1] The Court may grant summary judgment only if there are no genuine disputes or issues of material fact. Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

Respondent, as the moving party, bears the burden of proving that no genuine dispute or issue exists as to any material fact and that respondent is entitled to judgment as a matter of law. FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. at 529. In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party. FPL Group, Inc. v. Commissioner, 115 T.C. at 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529. The party opposing summary judgment must set forth specific facts showing that a question of genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988); King v. Commissioner, 87 T.C. 1213, 1217 (1986);

[1] All Rule references are to the Tax Court Rules of Practice and Procedure. Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended.

Shepherd v. Commissioner, T.C. Memo. 1997-555. When the moving party has carried its burden, however, the party opposing the summary judgment motion must do more than simply show that "there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The party opposing the motion "may not rest upon the mere allegations or denials of his pleading, but * * * must set forth specific facts showing there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Where the record viewed as a whole could not lead a reasonable trier of fact to find for the non-moving party, there is no "genuine issue for trial". Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. at 587.

Under Rule 121(d), if the adverse party does not respond to the motion for summary judgment, then this Court may enter a decision where appropriate against that party. See King v. Commissioner, 87 T.C. at 1217; Shepherd v. Commissioner, T.C. Memo. 1997-555. Petitioners have not responded to the motion for summary judgment. The Court could grant respondent's motion on that ground alone. However, even if the Court did not rely on that basis, the record in this matter shows that respondent is entitled to summary judgment on the merits of the case.

Unreported Income and Taxation

As a general rule, determinations by the Commissioner are presumed correct, and the taxpayer bears the burden of proving otherwise. Rule 142(a). In an unreported income case, however, the Commissioner may have certain obligations, if, for example (but unlike the situation in the present case), the taxpayer denies receipt of the income or asserts a reasonable dispute regarding an item of income reported on an information return filed with the Commissioner. See, e.g., sec. 6201(d); Day v Commissioner, 975 F.2d 534, 537 (8th Cir. 1992); Rule 34(b)(4) ("Any issue not raised in the assignments of error shall be deemed to be conceded.") Furthermore, although section 7491 may operate in enumerated circumstances to place the burden of proof on the Commissioner, because petitioners have not established that the conditions specified in section 7491(a)(1) and (2) have been met in this case, the burden-shifting provision of section 7491(a) is not applicable.

The basic premise with respect to income and taxation is that the Internal Revenue Code imposes a Federal tax on the taxable income of every individual. See sec. 1. Section 61(a) specifies that, "Except as otherwise provided", gross income for purposes of calculating such taxable income means "all income from whatever source derived". Compensation for services, including fees, commissions, fringe benefits, and similar items, is expressly encompassed within this broad definition. See sec. 61(a)(1); sec. 1.61-2(a)(1), Income Tax Regs. Likewise, section 85(a) is explicit in declaring that "gross income includes unemployment compensation".

With respect to the instant litigation, at no time have petitioners denied that they received the subject wages and unemployment compensation, nor have petitioners claimed that they received an amount less than the $10,118 amount determined by respondent in the notice of deficiency. See Parker v. Commissioner, 117 F.3d 785 (5th Cir. 1997); White v. Commissioner, T.C. Memo. 1997-459. Instead, petitioners contend that they should be relieved of responsibility for taxes on such amount because of the failure by the payers to withhold the requisite sums, despite petitioners' insistence and notable efforts to ensure that this was done.

The law, however, is to the contrary. Section 31(a) establishes an arrangement whereby the amount of tax withheld by an employer may be allowed to the employee as a credit against the tax due. Yet it has long been held that failure on the part of an employer to so withhold does not relieve or lessen the obligation of the employee to pay income tax. Church v. Commissioner, 810 F.2d 19, 20 (2d Cir. 1987); Chenault v. Commissioner, T.C. Memo. 2011-56. Thus, the employee remains ultimately liable for the tax, even if the employer was obligated to withhold but fails to do so. Edwards v. Commissioner, 39 T.C. 78, 84 (1962), aff'd in part on this issue and rev'd in part on another issue, 323 F.2d 751 (9th Cir. 1963); Zacharias v. Commissioner, T.C. Memo. 2001-67.

In sum, giving due regard to the statements contained in respondent's motion, which statements are incorporated into this order as the findings of fact and analysis of the Court made in support of the ruling embodied in this order, giving petitioners not only the benefit of every doubt as the Court is required to do at this stage of the proceeding, see Hicks v. Small, 69 F.3d 967, 969 (9th Cir. 1995), but wide pleading latitude as pro se litigants, see Estelle v. Gamble, 429 U.S. 97, 106 (1976), the Court concludes that petitioners have failed to raise any justiciable issue or relevant question of material fact and that respondent is entitled to summary judgment as a matter of law.

Accordingly, after due consideration of the foregoing and for cause, it is

ORDERED that respondent's Motion For Summary Judgment, filed December 21, 2017, is granted. It is further

ORDERED AND DECIDED that, without regard to an additional prepayment credit of $80, there is a deficiency in income tax due from petitioners for the taxable (calendar) year 2015 in the amount of $1,015.

(Signed) Robert N. Armen
Special Trial Judge

Entered: **FEB 08 2018**