

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

WILLIAM F. HOLDNER,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 17498-17 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER AND DECISION

Pending before the Court are (1) respondent’s Motion To Dismiss For Lack Of Jurisdiction As To Taxable Years 2004, 2005, and 2006, filed October 10, 2017; and (2) respondent’s Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted As To Taxable Year 2015, also filed on October 10, 2017. Petitioner filed an Opposition to respondent’s first motion on November 7, 2017. Most recently, by Order of the Chief Judge dated January 17, 2018, respondent’s aforementioned two motions were assigned to the undersigned for disposition.

Background

On August 16, 2017, petitioner filed a petition with the Court in which he “requests relief from a tax court judgment, Case No. 10375-08 by the Internal Revenue Service (IRS) assessment and collection of individual income taxes for the years 2004, 2005 and 2006”. Attached to the petition, as relevant, were (1) a Notice Of Deficiency, dated February 27, 2008, in which respondent (by his Seattle, Washington office) determined deficiencies in income taxes and accuracy-related penalties for the taxable (calendar) years 2004, 2005, and 2006; and (2) a Notice Of Determination Concerning Collection Action(s) Under Section 6320

and/or 6330 of the Internal Revenue Code, dated July 24, 2017, in which respondent's Las Vegas, Nevada Appeals Office sustained a proposed levy to collect petitioner's unpaid income tax liability for the taxable (calendar) year 2015.¹

In paragraph 1 of the aforementioned petition filed August 16, 2017, petitioner checked both the box for "Notice of Deficiency" and the box for "Notice of Determination Concerning Collection Action" to indicate the IRS notices that he disputed. However, in paragraph 2 of such petition only the February 27, 2008 Notice Of Deficiency was listed as the disputed notice, and in paragraph 3 of such petition only the years 2004, 2005, and 2006 were listed as the relevant years. Further, in paragraphs 5 and 6 of such petition (which paragraphs explained why petitioner disagreed with the IRS determination and the facts upon which he relied), only matters relevant to the 2004, 2005, and 2006 taxable years were pleaded.

A. Petitioner's Liabilities for 2004, 2005, and 2006

As discussed supra, respondent sent petitioner a Notice Of Deficiency, dated February 27, 2008, in which respondent determined deficiencies in income taxes and accuracy-related penalties for 2004, 2005, and 2006. See sec. 6212. Petitioner responded by commencing an action for redetermination in this Court at docket No. 10375-08. See sec. 6213(a). After a trial in February 2009, the Court filed its opinion on August 4, 2010, as T.C. Memo. 2010-175, deciding the disputed issues.² Petitioner then filed a motion for reconsideration in September 2010, which the Court denied in October 2010. In objecting to respondent's computation for entry of decision, which computation was filed in February 2011, petitioner continued to reargue the substantive issues that the Court had already decided in its August 2010 opinion. Ultimately, on March 10, 2011, the Court entered decision,

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

² Petitioner's case was consolidated with the case of his son, Randal W. Holdner, at docket No. 10367-08, which also involved the taxable (calendar) years 2004, 2005, and 2006. The Court's opinion at T.C. Memo. 2010-175 decided both cases. Randal W. Holdner is not part of the present case (i.e., docket No. 17498-17L), and he will not be mentioned further.

redetermining the deficiencies in income taxes and accuracy-related penalties for 2004, 2005, and 2006 in amounts much less than those determined by respondent in the February 27, 2008 Notice Of Deficiency. In June 2011 petitioner appealed to the Court of Appeals for the 9th Circuit, which affirmed the decision of the Tax Court in 2012. Holdner v. Commissioner, 483 Fed. Appx. 383 (9th Cir. 2012). In the Memorandum accompanying its Mandate the Court of Appeals stated, as relevant, the following:

It was not clearly erroneous for the tax court to conclude that Holdner Farms operated as a partnership between 2004 and 2006. The facts in the record support the plausible inference that Holdner Farms operated as a partnership for federal tax purposes between 2004 and 2006: (a) Randal and William Holdner operated Holdner Farms as a business; and (b) both contributed capital and labor to the enterprise, managed its operations, shared the profits of the business, made withdrawals from Holdner Farms' bank account, and held out Holdner Farms as a partnership. [Citations omitted.]

The Court of Appeals denied petitioner's requests for a rehearing and for reconsideration of that denial. Thereafter petitioner did not duly file a petition for certiorari. Accordingly, the Tax Court's decision in docket No. 10375-08 became final. See sec. 7481(a)(2)(A).

Petitioner again tried to relitigate his income tax liabilities for 2004, 2005, and 2006 in a collection case that he commenced in February 2013 at docket No. 3817-13L. See generally secs. 6330 and 6320; Rules 330-334. The prayer for relief in the February 2013 petition stated as follows:

Wherefore, the Petitioner prays that the Court make the following decisions:

(1) Holdner Farms was not a partnership for tax filing purposes for the years 2004, 2005 and 2006.

(2) Holdner Farms claimed farm expenses on the individual returns for the years in question are non-partnership expenses and are deductible for tax filing purposes.

(3) There is no deficiency in income tax and penalties for the years 2004, 2005 and 2006.

Ultimately, in an Order and Decision that was entered on November 13, 2013, the Court granted respondent's motion for summary judgment and sustained respondent's collection actions (filed notice of Federal tax lien and proposed levy). In the Order and Decision, the Court made the following statement:

Section 6330(c)(2)(B) precludes petitioner from challenging the existence or amount of his liability in this proceeding because he received a deficiency notice and thus had a previous opportunity to challenge the amounts in question. As previously mentioned, the Court's decision in [docket No. 10375-08] is now final. Section 6330(c)(2)(B) aside, petitioner is barred by the doctrine of res judicata from attempting to challenge his liabilities a second time in this proceeding. Frank Sawyer Trust of May 1992 v. Commissioner, 133 T.C. 60, 71-72 (2009); see also Commissioner v. Sunnen, 333 U.S. 591, 598 (1948).

In December 2013 petitioner appealed the Order And Decision to the Court of Appeals for the 9th Circuit, which affirmed the Tax Court. Holdner v. Commissioner, 623 Fed. Appx. 892 (9th Cir. 2015). In the Memorandum attached to its Mandate the Court of Appeals stated, in part, as follows:

The Tax Court properly sustained the collection action because Holdner was precluded from challenging the validity of the underlying tax assessments, as the matter had been resolved in prior litigation. See 26 U.S.C. §§ 6330(c)(2)(B), 6330(c)(4)(A)(i) (limiting issues a taxpayer may challenge at a Collection Due Process hearing); *Comm 'r v. Sunnen*, 333 U.S. 591, 598-99 (1948) (discussing the application of res judicata principles in tax litigation); *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 988 (9th Cir. 2005) (summary judgment is a final judgment on the merits for res judicata purposes); *Baker v. IRS (In re Baker)*, 74 F.3d 906, 910 (9th Cir. 1996) (per curiam) (res judicata precludes relitigation of issues that were or could have been raised in the prior action; "once a taxpayer's liability for a particular year is litigated, 'a judgment on the merits is res judicata as to any subsequent proceeding involving the same claim and the same tax year.'" (citation omitted)).

We do not consider Holdner's contentions concerning the propriety of the judgment entered in his prior tax case, which were addressed in a

prior appeal. *See Holdner v. Comm 'r*, 483 F. Appx 383 (9th Cir. 2012).

Id. Petitioner did not duly file a petition for certiorari. Accordingly, the Tax Court's decision in docket No. 3817-13L became final.³ See sec. 7481(a)(2)(A).

B. Petitioner's Liability for 2015

As discussed supra, petitioner filed a petition with the Court to commence the present case (i.e., docket No. 17498-17L) in which he referenced only the February 27, 2008 Notice Of Deficiency and only 2004, 2005, and 2006 as the taxable years in dispute. However, petitioner did attach to the petition a Notice Of Determination, dated July 24, 2017, sustaining a proposed levy to collect petitioner's unpaid income tax liability for 2015.

On October 13, 2017, the Court ordered petitioner to file "a proper amended petition that sets forth clear and concise assignments of each and every error that petitioner alleges to have been committed by the Commissioner in the determination regarding collection action for 2015 in dispute in this case, and clear and concise lettered statements of the facts on which petitioner bases the assignments of error." On November 7, 2017, petitioner filed an amended petition,

³ It would appear that petitioner again attempted to relitigate his liabilities for 2004, 2005, and 2006 in an action commenced against the Commissioner of Internal Revenue in the United States District Court for the District of Oregon. There the district court granted the Commissioner's motion to dismiss for lack of subject-matter jurisdiction, failure to state a claim for relief, and *res judicata* stating in part as follows:

Error! Main Document Only. Here Plaintiff [William F. Holdner] seeks to challenge for a third time the deficiency and penalty assessments for tax years 2004–2006. The issues Plaintiff raises in this action are one that he either raised or could have raised in his previous two tax actions. It is undisputed that the Tax Court has twice sustained the IRS and the Ninth Circuit has twice affirmed the Tax Court. The Court, therefore, concludes even if this Court has subject-matter jurisdiction, Plaintiff's claim is barred by *res judicata*.

The Court of Appeals for the 9th Circuit affirmed the dismissal. Holdner v. Commissioner, 698 Fed. Appx. 390 (9th Cir. 2017).

again referencing only the February 27, 2008 Notice Of Deficiency and only 2004, 2005, and 2006 as the taxable years in dispute. Notably, the amended petition fails to plead any assignments of error or allegations of facts that were committed by the Commissioner regarding the proposed collection action for 2015, nor was a copy of the July 24, 2017 Notice Of Determination attached to the amended petition as an exhibit. Indeed, a fair reading of the amended petition indicates that petitioner wishes only to relitigate his liabilities for 2004, 2005, and 2006, as the amended petition ends as follows:

CONCLUSION

Based on the foregoing the tax court decision in the assessment of taxes and penalties was merciless, arbitrary and perverse. A collection of an invalid assessment that is eligible for a refund constitutes a violation (as the Treasury Inspector General Report noted) of taxpayer rights and is fraudulent under the TERA Act enacted in 1982.

The judgment [presumably, this Court's Decision entered March 10, 2011] should be vacated.

Discussion

A. Jurisdiction in General

The Tax Court is a court of limited jurisdiction. See sec. 7442. Accordingly, the Court may exercise jurisdiction only to the extent expressly authorized by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In addition, jurisdiction must be proven affirmatively, and a party invoking the Court's jurisdiction bears the burden of proving that the Court has jurisdiction over the party's case. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960); National Comm. to Secure Justice, Etc. v. Commissioner, 27 T.C. 837, 839 (1957). In order to meet this burden, the party must establish affirmatively all facts giving rise to the Court's jurisdiction. See Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. at 180; Consolidated Co. v. Commissioner, 15 B.T.A. 645, 651 (1929).

B. Actions For Redetermination

If a taxpayer receives a notice of deficiency and commences an action for redetermination, and if the Court subsequently enters a decision that becomes final, then thereafter the taxpayer is barred by the doctrine of res judicata from relitigating the deficiency. See Commissioner v. Sunnen, 333 U.S. 591, 597-598 (1948), stating that the doctrine is applicable in the Federal income tax field:

Income taxes are levied on an annual basis. Each year is the origin of a new liability and of a separate cause of action. Thus if a claim of liability or non-liability relating to a particular tax year is litigated, a judgment on the merits is res judicata as to any subsequent proceeding involving the same claim and the same tax year.

Id. at 598; see also Koprowski v. Commissioner, 138 T.C. 54, 59-60 (2012) (Court reviewed).

Although the doctrine of res judicata is not jurisdictional in nature, the doctrine does serve to bar a taxpayer from relitigating deficiencies and penalties previously decided by the Court in a case that is final. Koprowski v. Commissioner, 138 T.C. at 59, note 3. Petitioner previously litigated his 2004, 2005, and 2006 income tax liabilities. Furthermore, petitioner has not alleged in his petition or in his amended petition, nor does the record show, any ground that would properly justify the reopening of an otherwise closed case. See Abattis v. Commissioner, 859 F.2d 115, 118-119 (9th Cir. 1988), aff'd 86 T.C. 1319 (1986).

C. Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted

Giving due regard to the statements contained in respondent's motion, which statements are incorporated in this Order as the findings and analysis of the Court made in support of the ruling embodied herein, and giving petitioner 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 a pro se litigant, see Estelle v. Gamble, 429 U.S. 97, 106 (1976), the Court finds that petitioner's pleadings in the present case fail to raise any justiciable issue. Rule 40; see Parker v. Commissioner, 117 F.3d 785, 787 (5th Cir. 1997); White v. Commissioner, T.C. Memo. 1997-459. The Court's obligation to liberally construe such pleadings does not require that the Court re-write them for him. See, e.g., Snow v. Direct, Inc., 450 F.3d 1314 (11th Cir. 2006). Petitioner's pleadings contain nothing that suggests that respondent erred with respect to the determination made in the July 24, 2017 Notice Of Determination, there being an

absence of a single justiciable assignment of error or justiciable allegation of fact. See Rules 34(b), 331(b). Indeed, petitioner's pleadings, liberally construed, demonstrate only that petitioner wishes, once again, to litigate his liabilities for 2004, 2005, and 2006.

In view of the foregoing, it is hereby

ORDERED that respondent's Motion To Dismiss For Lack Of Jurisdiction As To Taxable Years 2004, 2005, and 2006, filed October 10, 2017, is granted in that this case is dismissed as to those years because petitioner's liabilities for those years were established in a decision of this Court that has long been final, and no grounds have been persuasively alleged, much less proven, to vacate such decision. It is further

ORDERED that respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted As To Taxable Year 2015, filed October 10, 2017, is granted, and this case is dismissed on the stated ground as to that year. It is further

ORDERED AND DECIDED that respondent may proceed with the proposed collection action (levy) in respect of petitioner's outstanding income tax liability for the taxable (calendar) year 2015, as determined by respondent's Las Vegas, Nevada Appeals Office in the Notice Of Determination Concerning Collection Action(s), dated July 24, 2017, upon which notice this case is based.

(Signed) Robert N. Armen
Special Trial Judge

ENTERED: **FEB 09 2018**