

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

TERRY THOMAS WOODS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 25294-16S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This case is before the Court on respondent’s Motion for Summary Judgment, which was filed on July 24, 2017, and supplemented on January 4, 2018.

Petitioner resided in Reno, Nevada, at the time the petition underlying this proceeding was filed with the Court.

Background

The following facts are not in dispute and are derived from the pleadings, respondent’s Motion for Summary Judgment, as supplemented, and the supporting exhibits attached thereto. The facts are stated solely for purposes of deciding the motion before us. See Hahn v. Commissioner, 110 T.C. 140, 141 (1998); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff’d, 17 F.3d 965 (7th Cir. 1994).

Petitioner failed to make payments on an automobile loan financed by AmeriCredit Financial Corp., doing business as GM Financial (AmeriCredit). AmeriCredit attempted to collect the debt over the course of three years, using four collection agencies in that attempt. On or about February 22, 2014, AmeriCredit realized their loss from petitioner’s default on his vehicle contract and security agreement, and on that date cancelled the debt and issued to petitioner a Form 1099-C, Cancellation of Debt. The cancellation of debt income was in the amount

of \$7,559.¹ Petitioner did not report the cancellation of debt income on his 2014 tax return. In a notice of deficiency, dated August 22, 2016, respondent determined an income tax deficiency for the taxable year 2014 of \$1,132, which amount arose from the unreported cancellation of debt income.

Petitioner timely filed a petition disputing the notice of deficiency issued to him for the taxable year 2014. After an answer was filed respondent filed a Motion for Summary Judgment, pursuant to Rule 121.² By Order dated June 28, 2017, the Court ordered petitioner to file a response by July 19, 2017. Petitioner moved for an extension of time to file his response, stating that the parties were in the process of settling the case. Petitioner's motion was granted, and petitioner's deadline to respond to the summary judgment motion was extended to August 21, 2017.

Petitioner failed to file a further response, and on September 11, 2017, the Court ordered the parties to either submit proposed decision documents, or file status reports by October 3, 2017. On that date, respondent filed a Status Report informing the Court that he had mailed decision documents to petitioner on July 20, 2017, and having failed to receive a response, contacted petitioner on September 20, 2017. Petitioner informed respondent that he "completely forgot about it". Respondent stated he expected to receive the decision documents by October 6, 2017.

On October 4, 2017, the Court ordered the parties to either submit proposed decision documents or file further status reports no later than November 6, 2017. Respondent filed a Status Report on November 3, 2017, stating that petitioner did not return the decision documents and respondent had been unable to reach petitioner. On November 13, 2017, the Court directed petitioner to either return signed proposed decision documents to respondent or file a response to respondent's summary judgment motion by December 11, 2017.

Petitioner failed to respond to the Court's Order. On January 4, 2018, respondent filed a First Supplement to Motion for Summary Judgment, wherein he requested that the Court issue an Order directing petitioner to show cause why

¹Monetary amounts are rounded to the nearest dollar.

²All Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code of 1986, as amended, in effect for the years in issue.

respondent's summary judgment motion should not be granted. On February 22, 2018, the Court issued an Order To Show Cause, directing petitioner to respond on or before March 15, 2018. Petitioner failed to comply with the Court's Order To Show Cause.

Discussion

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 upon all or any part of the legal issues in controversy. Rule 121(a). We may grant summary judgment only if there are no genuine issues of material fact. Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

The moving party bears the burden of proving that no genuine issue exists as to any material fact and that such party is entitled to judgment as a matter of law. FPL Group, Inc. v. Commissioner, 115 T.C. 554 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, *supra*. 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, *supra*; Bond v. Commissioner, *supra*; Naftel v. Commissioner, *supra*. 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 summary judgment must set forth specific facts which show 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); Shepherd v. Commissioner, T.C. Memo. 1997-555. 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., *supra* 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, *supra* at 1217; Shepherd v. Commissioner,

supra. Petitioner has not responded to the respondent's summary judgment motion. The Court could grant respondent's summary judgment motion on that ground along. However, the record in this case shows that respondent is entitled to summary judgment on the merits of the case.

This Court has held that gross income includes all income from whatever source derived, and income from discharge of indebtedness is included in that broad definition. Section 61(a)(12); United States v. Kirby Lumber Co., 284 U.S. 1 (1931); sec. 1.61-12(a), Income Tax Regs. Internal Revenue Code section 108 provides limited exceptions to that general rule. One of those exceptions is if the discharge occurs when the taxpayer is insolvent. Sec. 108(a)(1)(B). A taxpayer is insolvent if, immediately before the cancellation of debt, his liabilities exceed the fair market value of his assets. Sec. 108(d)(3). The amount of income excluded by virtue of a taxpayer's insolvency may not exceed the amount by which he is insolvent. Sec. 108(a)(3). A petitioner bears the burden of proving his insolvency for purposes of section 108. See Shepherd v. Commissioner, T.C. Memo. 2012-212; Bressi v. Commissioner, T.C. Memo. 1991-651, aff'd without published opinion, 989 F.2d 486 (3rd Cir. 1993).

In support of his summary judgment motion, respondent provided documents from AmeriCredit including the purchase contract for petitioner's automobile, petitioner's payment history, and the collection agency assignment history. Thus, the record in this case reflects that (1) petitioner financed an automobile through AmeriCredit, (2) petitioner defaulted on the loan, (3) the unpaid balance was \$7,559, (3) eventually AmeriCredit cancelled this amount of debt in 2014 and issued to petitioner a Form 1099-C, Cancellation of Debt, and (5) petitioner failed to include the amount of the cancelled debt in his income for 2014.

Although given numerous opportunities to respond to respondent's summary judgment motion, petitioner has failed to dispute respondent's factual contentions or to substantiate the claims made in his petition. Petitioner has not provided any documentation establishing that he did not enter into the automobile purchase agreement with AmeriCredit or that he sought adjudication of the debt. Nor has petitioner provided any information to support his claim that he was insolvent at the time the AmeriCredit debt was cancelled.

Upon due consideration, it is

ORDERED that the Court's Order To Show Cause, issued February 22, 2018, is hereby made absolute. It is further

ORDERED that Respondent's Motion for Summary Judgment, filed June 23, 2017, and supplemented on January 4, 2018, is granted. It is further

ORDERED and DECIDED that there is a deficiency in income tax due from petitioner for the taxable year 2014 in the amount of \$1,132.

(Signed) Peter J. Panuthos
Special Trial Judge

ENTERED: **APR 20 2018**