

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

JIM SERWER,)
)
 Petitioner(s),)
)
 v.) Docket No. 10990-17SL.
)
 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 March 9, 2018, pursuant to Rule 53.¹ On May 16, 2017, petitioner timely filed a petition requesting that the Court review the Internal Revenue Service (IRS) notice of determination sustaining the proposed levy to collect petitioner’s unpaid Federal income tax liability for 2014. Respondent moves that this case be dismissed as moot because the tax liability, including addition to tax, was satisfied after the petition was filed and therefore the proposed levy is no longer necessary. Respondent also filed a Declaration of Emily Harris in Support of Motion to Dismiss on Grounds of Mootness, attaching a copy of a TXMODA transcript for petitioner’s taxable year 2014, reflecting that (1) on May 5, 2017, the IRS applied an overpayment from petitioner’s 2016 taxable year to satisfy his 2014 income tax liability and (2) the current account balance for 2014 is zero. Petitioner objects to respondent’s motion.

On March 19, 2018, a hearing was held on respondent’s motion. The parties appeared and were heard. Petitioner’s Response was filed on March 19, 2018.

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), 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 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 2014 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.

In his response and at the hearing on respondent's motion petitioner did not dispute that the 2014 income tax liability was satisfied; instead he asserted that (1) the IRS failed to provide an explanation for the underlying liability and (2) the Court should abate the remaining section 6651(a)(2) addition to tax. We need not consider these issues since we dismiss for mootness. Id. Nevertheless, we provide a brief explanation in response to petitioner's assertions.

Petitioner timely filed his 2014 Form 1040, U.S. Individual Income Tax Return, which included a calculation of his Alternative Minimum Tax (AMT). The IRS informed petitioner that there was an error in his calculation of the AMT and upon request provided a corrected calculation. Petitioner initially disagreed with the calculation and subsequently filed a 2014 Form 1040X, Amended U.S. Individual Income Tax Return, with his own proposed calculations. The IRS then identified a number of mathematical errors on petitioner's 2014 Form 1040X. After a number of communications with the Settlement Officer, petitioner

conceded that the 2014 Form 1040 was incorrect, the 2014 Form 1040X was also incorrect, and that the underpayment was due to his own mathematical errors.

Regarding the section 6651(a)(2) failure to timely pay addition to tax, petitioner seeks an overpayment for the \$205 addition to tax already satisfied. As previously discussed this Court lacks jurisdiction in a lien or levy case to determine an overpayment or to order a refund or credit of taxes. See Greene-Thapedi v. Commissioner, 126 T.C. at 8-9. Petitioner is reminded that (1) he conceded that he did not timely pay the underlying liability when he filed his 2014 Form 1040 and (2) he has already benefitted from a partial abatement of the addition to tax.

Upon due consideration, it is

ORDERED that respondent's Motion to Dismiss on Grounds of Mootness, filed March 9, 2018, is granted, and this case is dismissed on the ground that petitioner's income tax liability for taxable year 2014 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: **APR 20 2018**