

UNITED STATES TAX COURT
WASHINGTON, DC 20217

STEVEN R. RADER,)
)
Petitioner,) **CT**
)
v.) Docket No. 12507-17 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL AND DECISION

This is a collection review case. On July 17, 2017, respondent filed a Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted. On August 10, 2017, petitioner filed a Notice of Objection to respondent’s motion. On November 6, 2017, petitioner filed an amended petition. On December 19, 2017, respondent filed another Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted, which the Court will recharacterize as a First Supplement to respondent’s Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted, filed July 17, 2017. As discussed below, we will grant respondent’s motion, as supplemented.

Background

Petitioner failed to file a Federal income tax return for 2012 or pay any Federal income tax or estimated tax for that year. Pursuant to section 6020(b),¹ respondent prepared a substitute for return for petitioner and subsequently issued to petitioner a notice of deficiency, dated October 26, 2015. Petitioner timely filed a petition with respect to that notice of deficiency,² and respondent moved to dismiss petitioner’s case for failure to state a claim upon which relief can be granted. The Court found petitioner’s filed documents in that case contained no assignments of error or allegations of fact in support of any justiciable claim. Accordingly, on May 31, 2016, the Court entered an Order and Decision holding petitioner liable for a deficiency and additions to tax pursuant to sections 6651(a)(1) and (2) and section 6654(a) in the amounts of \$8,631.00, \$1,941.98, \$1,251.50, and \$154.75, respectively. In addition, because the Court concluded that

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Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

2

See Rader v. Commissioner, Docket No. 2340-16.

petitioner's position in that case was frivolous and groundless, and petitioner had instituted or maintained that proceeding primarily for delay, the Court held that petitioner was liable for a penalty pursuant to section 6673.

When petitioner did not pay the amounts owed for tax year 2012, the Internal Revenue Service (IRS) filed a Notice of Federal Tax Lien and issued to petitioner a Notice of Federal Tax Lien filing (lien notice). Petitioner timely requested a collection due process (CDP) hearing. As petitioner's tax liability for 2012 had been previously litigated in his Tax Court case at Docket No. 2340-16, petitioner was precluded from raising his underlying liability at the CDP hearing. See sec. 6330(c)(2)(B). After petitioner's CDP hearing, the IRS issued to petitioner the notice of determination concerning collection action upon which this case is based, sustaining the lien filing.

On June 5, 2017, petitioner timely filed a petition in this Court, seeking review of the notice of determination issued with respect to his 2012 tax year. The petition contains little more than pseudo-legal verbiage; references to Internal Revenue Code (Code) sections and citations of tax cases, accompanied by petitioner's questionable interpretations of those Code sections and case holdings; and accusations of fraud on the part of the IRS. Petitioner essentially attempts to show that the substitute for return prepared by the IRS for his 2012 tax year is insufficient for purposes of proving his liability for income taxes for 2012 and that the notice of deficiency issued to him for 2012 was deficient in certain respects. Petitioner concludes his petition by stating, among other things, that "All amounts the IRS claims I owe for year 2012 must be set aside and a ZERO amount be officially determined and documented."

On July 17, 2017, respondent filed his Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted, asserting therein that "[n]o justiciable error has been alleged in the petition with respect to the Commissioner's determination set forth in the [notice of determination] and no facts in support of any such error are apparent therein." On August 10, 2017, petitioner filed a notice of objection to respondent's motion to dismiss. Thereafter, on November 6, 2017, petitioner filed an amended petition. Petitioner's objection and amended petition repeat the same groundless and meritless arguments found in the petition. Notably, petitioner does not allege in any of his filed documents that during the CDP hearing, the settlement officer failed to properly consider any (1) appropriate spousal defenses, (2) challenges to the appropriateness of the collection action, and (3) offers of collection alternatives. See sec. 6330(c)(2)(A).

Discussion

Rule 40 provides that a party may file a motion to dismiss for failure to state a claim upon which relief can be granted. The Court may grant such a motion when it appears beyond doubt that the party's adversary can prove no set of facts in support of a claim that would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Price v. Moody, 677 F.2d 676, 677 (8th Cir. 1982).

Rule 331(b)(4) requires that a petition filed in this Court contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed in the

notice of determination. Rule 331(b)(5) further requires that the petition contain clear and concise letter statements of the facts on which the taxpayer bases the assignments of error. Any issue not raised in the assignments of error is deemed to be conceded. Rule 331(b)(4). In Pierson v. Commissioner, 115 T.C. 576 (2000), the Court acknowledged and enforced the pleading requirements prescribed in Rule 331(b) and dismissed a petition in a collection case on the ground that taxpayer had failed to state a claim for relief.

Giving petitioner not only the benefit of every doubt as the Court is required to do at this stage of the proceedings, see Hicks v. Small, 69 F.3d 967, 969 (9th Cir. 1995), and 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. See Rule 40; Parker v. Commissioner, 117 F.3d 785, 787 (5th Cir. 1997); White v. Commissioner, T.C. Memo. 1997-459, 1997 Tax Ct. Memo LEXIS 544, at *7-*10. The Court's obligation to liberally construe such pleadings does not require that the Court re-write the pleadings for petitioner. See, e.g., Snow v. Direct, Inc., 450 F.3d 1314 (11th Cir. 2006).

The petition and amended petition in this case do not satisfy the requirements of Rule 331(b)(4) and (5). Those filed documents, as well as petitioner's objection to respondent's motion, are replete with frivolous and meritless allegations. There is neither assignment of error nor allegation of fact in support of any justiciable claim. To the extent that petitioner is attempting to re-litigate his underlying tax liability for 2012, he is barred from doing so because he had a prior opportunity to dispute that liability in a deficiency proceeding in this Court at Docket No. 2340-16. See secs. 6320(c), 6330(c)(3).

As the Court of Appeals for the Fifth Circuit has remarked: "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984). Suffice it to say that petitioner is a taxpayer subject to the Federal income tax who is obliged to file a Federal income tax return and pay Federal income tax on his income. See secs. 1, 61(a), 6012(a)(1), 7701(a)(1) and (14). See also United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held, by the courts of this republic to be income, subject to the income tax laws currently applicable."). Furthermore, petitioner's arguments concerning substitutes for return prepared by the IRS have been previously rejected as meritless. Rader v. Commissioner, 143 T.C. 376, 382-383 (2014), aff'd on this issue, 616 Fed.Appx. 391 (10th Cir. 2015). Moreover, the minimum requirement for a notice of deficiency is that it sets forth the taxpayer, the amount of a deficiency, and the tax year involved. Campbell v. Commissioner, 90 T.C. 110, 115 (1988); see also Alford v. Commissioner, 800 F.2d 987, 988 (1986). In sum, petitioner has failed to comply with the simple pleading requirements of Rule 331(b). Accordingly, we will grant respondent's motion to dismiss this case, as supplemented.

Finally, pursuant to section 6673, the Court may impose a penalty of up to \$25,000 if a taxpayer institutes or maintains a frivolous or groundless position or institutes or maintains a proceeding primarily for delay. Indeed, we note that on several prior occasions, this Court has

imposed such a penalty on petitioner.³ As petitioner seems determined to continue to assert frivolous and meritless arguments that have been rejected time and time again, we will once again impose the section 6673 penalty on petitioner.

Upon due consideration, and for cause, it is

ORDERED that respondent's Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted, filed December 19, 2017, is recharacterized as a First Supplement to Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted. It is further

ORDERED that respondent's Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted, as supplemented, is granted, and this case is dismissed. It is further

ORDERED AND DECIDED that respondent's Notice of Determination Concerning Collection Action(s) under Section(s) 6320 and/or 6330, dated May 5, 2017, upon which this case is based, is sustained. It is further

ORDERED AND DECIDED that, on the Court's own motion, petitioner shall be liable for a penalty under I.R.C. section 6673(a)(1) of \$5,000.

**(Signed) Peter J. Panuthos
Special Trial Judge**

ENTERED: **APR 30 2018**

³ See Docket Nos. 11476-11, 27722-11, 11655-14, and 2340-16.