

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DEBRA L. MARCH,)
)
Petitioner,)
) **BD**
v.) Docket No. 6161-17 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

At issue in this case is the determination of the Appeals Office (“Appeals”) of the Internal Revenue Service (“IRS”) to sustain the filing of a notice of lien for the collection of income tax from 2009 and 2010 for petitioner Debra L. March. We will order the Commissioner to file a status report.

Background

At issue in March v. Commissioner, No. 10223-14, was a notice of determination (“NOD”) by Appeals that sustained a notice of levy to collect income tax for 2009. On June 25, 2015, we entered a stipulated decision that did not sustain Appeals’ determination. In the decision document the parties also stated:

It is further stipulated that respondent will abate the income tax liability for the 2009 taxable year on the basis that the statutory notice of deficiency [“SNOD”] was not sent to petitioner’s last known address.

We assume that the IRS abated the 2009 income tax assessment, as the Commissioner had undertaken to do.

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However, thereafter the IRS evidently reassessed the 2009 income tax and filed a notice of lien as to Ms. March's 2009 income tax liability. On February 6, 2017, Appeals issued an NOD sustaining that lien filing. The February 2017 NOD explains:

For 2009, during your Collection Due Process hearing regarding a Final Notice of Intent to Levy as well as the subsequent U.S. Tax Court filing. Per the tax court decision, the original assessment was removed to allow you time to raise the liability (i.e., filing an original tax return). When that did not happen, IRS restored the tax assessment in February 2016.

In showing "verification" pursuant to I.R.C. section 6330(c)(1), the NOD states: "The Settlement Officer verified through transcript analysis that the assessment was properly made per IRC §6201 for each tax and period listed on the CDP notice."

On March 6, 2017, Ms. March timely mailed to this Court her petition in this case to challenge that determination.

Discussion

We cannot tell the authority on which the IRS relied to assess the 2009 income tax at issue in this case. The NOD cites "§6201". Section 6201(a)(1) authorizes the IRS to assess "taxes ... as to which returns ... are made", but it appears Ms. March has filed no return. We see no other obviously pertinent provision in section 6201, except for its cross reference in subsection (e) to "deficiencies" in "subchapter B"--i.e., sections 6211 to 6216. Those provisions authorize the IRS to determine a deficiency, to mail the taxpayer an SNOD, and to assess the deficiency upon the passage of 90 days after that mailing (unless a Tax Court petition is timely filed); but the parties stipulated in Docket No. 10223-14 that no SNOD had been properly mailed, and the NOD appears to indicate that no SNOD was mailed thereafter.

Rather, the "IRS restored the tax assessment". We would benefit from an explanation of the authority for this action. It is therefore

ORDERED that, no later than August 27, 2018, the Commissioner shall file a status report (or another appropriate filing) explaining his position about the validity of the assessment of 2009 income tax underlying the lien filing at issue in this case.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
August 10, 2018