

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

MICHAEL P. MARTIN,)	
)	
Petitioner,)	
)	
v.)	Docket No. 22560-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	
)	
)	
)	

ORDER

This case seeking a redetermination of deficiencies in Federal income taxes is before the Court principally on petitioner’s Motion For Summary Judgment, filed April 5, 2018, pursuant to Rule 121(a).¹ In his motion petitioner seeks judgment in his favor that the plea agreement that he entered into with the Government in his prior criminal proceeding bars assessment and collection of the income tax deficiencies and penalties/addition to tax for 2003 and 2004 that were determined against petitioner in the notice of deficiency dated August 2, 2017. On April 27, 2018, respondent filed a Response objecting to the granting of petitioner’s motion. Thereafter, on August 9, 2018, petitioner filed a Motion To Consolidate the present case with Dkt. No. 22616-17, a redetermination action

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

Also, petitioner’s Motion For Summary Judgment was filed prematurely, see Rules 38, 121(a), and it could be denied on that basis. However, given the Court’s view of the merits of the motion, little would be served in denying it on procedural grounds only to have petitioner refile it. Accordingly, the Court has chosen to proceed on a substantive basis.

commenced by Krystina L. Szabo regarding another notice of deficiency dated August 2, 2017, for 2003 and 2004 that closely parallels the deficiency notice that petitioner contests in the present case. This latter motion recites that counsel for respondent has no objection to its granting.

Background

Pony Express Services, LLC (Pony Express) provided foster care and related services to persons with mental handicaps in the western part of Virginia and maintained and operated three group homes in that area. Petitioner (Pony Express's owner) and Krystina L. Szabo (his spouse) were responsible for Pony Express's daily activities. Ms. Szabo was an employee and program manager of Pony Express.

On December 12, 2006, the U.S. Attorney for the Western District of Virginia filed a criminal information (Information) in the United States district court for that district charging both petitioner and Ms. Szabo with one count of violating 18 U.S.C. section 371 for conspiracy to defraud Medicare, Medicaid, and the Internal Revenue Service. Among other things, the Information charged that: (1) beginning at least on or about January 2002 through March 2006, petitioner, Ms. Szabo, and other unnamed individuals conspired to both (a) defraud Medicaid and health insurance benefit programs and (b) defraud the United States "by impeding, impairing, obstructing and defeating the lawful functions of the Department of Treasury, Internal Revenue Service, in the ascertainment, computation, assessment and collection of income taxes by deceit, craft, trickery, concealment and means that are dishonest"; (2) the object of such conspiracy was to unlawfully enrich the defendants and others by falsely and fraudulently billing Medicaid for residential services not rendered and services not provided in the manner envisioned and required by Medicaid; and (3) to maximize their proceeds, petitioner and Ms. Szabo also improperly "utilized the foster home tax credit" by falsely informing their accountant that petitioner and Ms. Szabo "were residing separately in two of the residential facilities."²

² Even though the Information provided that petitioner and Ms. Szabo improperly "utilized the foster home tax credit", the Information appears to contemplate section 131, as that section is mentioned in the Information. The Court notes that section 131 provides for an exclusion from income in providing that amounts received by a foster care provider are not included in gross income if the payments are made by a qualified foster care placement agency for caring for a qualified foster care individual in the foster care provider's residence.

Also on December 12, 2006, a Plea Agreement that was executed by petitioner and his attorney, and acknowledged by the assistant United States attorney, was filed in petitioner's criminal case with the United States District Court for the Western District of Virginia. In pertinent part, petitioner's Plea Agreement provided as follows:

14. COMPLETION OF PROSECUTION

I understand that, except as provided for in this plea agreement, there will be no further prosecution of me in the Western District of Virginia for any matters about which the United States has specific knowledge gained from the investigation of my conduct that resulted in the pending Indictment and relative to my ownership and operation of Pony Express LLC.

15. LIMITATION OF AGREEMENT

This agreement is limited to the Western Judicial District of Virginia and does not bind other [F]ederal judicial districts, nor does it bind any state or local authorities. However, if requested, the provisions of this agreement will be provided to governmental agencies.

* * * * *

18. GENERAL UNDERSTANDINGS

* * * * *

This writing sets forth the entire understanding between the parties and constitutes the complete Plea Agreement between the United States Attorney for the Western District of Virginia and me, and no other additional terms or agreements shall be entered except and unless those other terms or agreements are in writing and signed by the parties. This Plea Agreement supersedes all prior understandings, promises, agreements, or conditions, if any between the United States and me.

Petitioner's Plea Agreement does not address potential civil tax liabilities or any agreement with respect to such liabilities.

On July 26, 2007, the court entered its amended judgment of conviction in the criminal case.³ The amended judgment sentenced petitioner and Ms. Szabo each to 27 months imprisonment and three years of supervised release, imposed against each a \$100 special assessment, and ordered restitution by them, jointly and severally, of \$173,174.65 payable to the United States Department of Medical Assistance Services. Petitioner and Ms. Szabo subsequently satisfied the judgment.

In a notice of deficiency dated August, 2, 2017, respondent determined against petitioner the following deficiencies in income taxes, penalties, and addition to tax:

<u>Year</u>	<u>Deficiency</u>	<u>Penalty or Addition to Tax</u>	
		<u>Sec. 6663</u>	<u>Sec. 6651(a)(1)</u>
2003	\$66,724	\$50,043	--
2004	104,140	78,105	\$18,428

The petition, which was timely filed October 30, 2017, disputes for both years the deficiencies in tax, the penalties, and the addition to tax. Respondent, in his Answer filed December 21, 2017, concedes no error with respect to the determinations made in the notice of deficiency.

As previously stated, on April 5, 2018, petitioner filed his Motion For Summary Judgment. In his motion petitioner contends that the Plea Agreement entered into in December 2006 between him and the Government was “a global bill of peace” and, as a result, respondent should be barred from civilly determining, assessing, or collecting any deficiency in income tax, penalty, or addition to tax for 2003 and 2004.⁴ Petitioner further contends that the Government did not “preserve[] its rights to pursue a criminal defendant for tax assessments and penalties after an entry of criminal judgment”, unlike (so petitioner alleges) the Government did in other unrelated plea agreements.

³ The judgment was amended to correct for clerical mistake.

⁴ Petitioner does not contend that he and the Government ever entered into any “other terms or agreements” subsequent to the December 2016 Plea Agreement. See para. 18, “General Understandings”, of such Plea Agreement, quoted supra on page 3 of this Order.

Discussion

A. Petitioner's Motion For Summary Judgment

This Court may grant summary judgment only if there are no genuine disputes or issues of material fact and the moving party is entitled to judgment as a matter of law. See Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 528-529 (1985). Petitioner, as the moving party, bears the burden of proving that no genuine disputes or issues exist as to any material fact and that petitioner is entitled to judgment as a matter of law. FPL Grp., Inc. v. Commissioner, 115 T.C. 544, 559 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. at 529. In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in light most favorable to the nonmoving party. FPL Grp., Inc. v. Commissioner, 115 T.C. at 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529.

In determining if petitioner is entitled to summary judgment, the Court must examine the Plea Agreement that was actually entered into by petitioner and the Government in December 2006. Plea agreements are generally interpreted according to the basic principles of contract law and any ambiguity must be construed against the Government. See Puckett v. United States, 556 U.S. 129, 137 (2009); United States v. Barefoot, 754 F.3d 225, 240-241 (4th Cir. 2014); United States v. Fentress, 792 F.2d 461, 464 (1986).

Congress created separate civil and criminal procedures to enforce the Federal tax laws, see Spies v. United States, 317 U.S. 492, 495 (1943), and the Government may impose criminal sanctions and civilly assess and collect taxes and additions to tax in respect of the same act or omission. See Helvering v. Mitchell, 303 U.S. 391, 399-405 (1938) (discussing the distinction between civil additions to tax for fraud and criminal tax fraud penalties); see also Harper v. Commissioner, 54 T.C. 1121, 1138 (1970).

Petitioner's Plea Agreement "sets forth the entire understanding between the parties"; "constitutes the complete Plea Agreement"; and, noticeably, fails to address the civil assessment and collection of taxes, much less bar respondent from proceeding civilly. In short, there is nothing in petitioner's Plea Agreement that precludes respondent from determining, assessing, and collecting any deficiency in income tax, penalty, and addition to tax for either of the years at issue in the

present case. Thus, petitioner, as the moving party, has failed to establish that he is entitled to judgment as a matter of law. Accordingly, summary judgment is not appropriate under these circumstances, and petitioner's motion will be denied.

B. Petitioner's Motion To Consolidate

On August 9, 2018, petitioner filed a Motion To Consolidate the present case with Dkt. No. 22616-17. As previously stated, the latter case is a redetermination action commenced by Krystina L. Szabo regarding an August 2, 2017 notice of deficiency for 2003 and 2004 that closely parallels the deficiency notice that petitioner contests in the present case. The motion recites that counsel for respondent has no objection to its granting.

It cannot be denied that the present case and Dkt. No. 22616-17 have much in common, including respondent's determination of the fraud penalty in each case. Nevertheless, a decision regarding consolidation is best left to the discretion of the judge to whom these cases will be assigned for trial. Accordingly, the Court will deny the Motion To Consolidate without prejudice to petitioner to refile it at such time as these cases are calendared for trial.

Conclusion

Premises considered, it is

ORDERED that petitioner's Motion for Summary Judgment, filed April 5, 2018, is denied. It is further

ORDERED that petitioner's Motion To Consolidate, filed August 9, 2018, is denied without prejudice.

**(Signed) Robert N. Armen
Special Trial Judge**

Dated: Washington, D.C.
September 5, 2018