

UNITED STATES TAX COURT
WASHINGTON, DC 20217

RODNEY P. WALKER,)
)
Petitioner(s),)
)
v.) Docket No. 16108-14 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER AND DECISION

This collection due process (CDP) case is before us to review a determination and a supplemental determination by respondent's Appeals Office (Appeals) to proceed with collection by levy of petitioner's unpaid 2007 and 2009 income taxes. (A companion CDP case, dkt No. 9435-15L, is before us to review a determination and a supplemental determination by Appeals to proceed with collection by lien of petitioner's unpaid 2001 through 2007 income taxes.) We have disposed of many issues in this case on respondent's motion for summary judgment, see Walker v. Commissioner, T.C. Memo. 2018-22, and by previous orders. We have left only to dispose of our order to show cause dated August 27, 2018 (August 27 order), and to enter decision.

By the August 27 order, we ordered petitioner on or before September 10, 2018, to show cause why in this case we should not impose on him a penalty under Internal Revenue Code (I.R.C.) section 6673(a)(1). In pertinent part, I.R.C. section 6673(a)(1) provides for a penalty of up to \$25,000 if the taxpayer has instituted or maintained proceedings before the Tax Court primarily for delay or the taxpayer's position in the proceeding is frivolous or groundless. Petitioner has not responded to the order.

The August 27 order followed our remand of this case and the companion case to respondent's Appeals Office for a supplemental hearing concerning petitioner's 2007 and 2009 income tax liabilities. Based on supplemental

determinations following the hearing and status reports received from respondent, we found that Settlement Officer August had provided petitioner with an explanation of respondent's calculations of his 2007 and 2009 income taxes and accorded him the opportunity to file returns claiming some lesser amount of tax but that petitioner had ignored that offer. Petitioner, instead, used the supplemental hearing to raise an issue on which we had already ruled and that served no purpose other than to delay completion of respondent's legitimate efforts to collect eight years of unpaid income taxes. We expressed our belief that petitioner had maintained these proceedings during the period of remand primarily for delay by raising a frivolous argument. In the face of petitioner's failure to show cause why we should not impose on him an I.R.C. section 6673(a)(1) penalty for maintaining these proceedings primarily for delay, we find that petitioner has maintained these proceedings primarily for delay and we will impose on him an I.R.C. section 6673(a)(1) penalty of \$5,000.

In the August 27 order, we also stated that, since, during his supplemental hearing, petitioner did not raise any challenge to the existence or amount of his underlying tax liabilities for 2007 or 2009, we saw no reasons not to uphold the determination and the supplemental determination and to sustain in full respondent's notice of federal tax lien for 2007 and his levy notice for 2007 and 2009, and we would do so in our orders and decisions disposing of this and the companion case.

It is, therefore,

ORDERED that the remainder of respondent's motion for summary judgment, filed January 29, 2016, is granted in that the amount of petitioner's liabilities for 2007 and 2009 are not before us because of petitioner's failure on remand to challenge the existence or amount of the underlying tax liabilities for those years and there remains no genuine dispute as to any material fact. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action for the taxable years 2007 and 2009 as determined in the Notice and Supplemental Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, upon which this case is based. It is further

ORDERED AND DECIDED that petitioner shall pay to the United States a penalty under I.R.C. section 6673(a)(1) in the amount of \$5,000, and the Court's Order to Show Cause dated August 27, 2018, is hereby made absolute.

**(Signed) James S. Halpern
Judge**

Entered: **OCT 01 2018**