

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

HARJIT BHAMBRA,)
)
 Petitioner(s),)
)
 v.) Docket No. 1395-16 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER TO SHOW CAUSE

This case arises out of a petition under Internal Revenue Code section 6330(d) challenging respondent's determination to sustain the filing of a notice of Federal tax lien (NFTL) to collect from petitioner restitution-based assessments and fraud penalties related to petitioner's 2003 and 2004 taxable years. Previously, we granted respondent's motion for partial summary judgment with respect to the restitution. The only issue remaining is petitioner's liability for the fraud penalties. By order dated July 23, 2018, we remanded this case to respondent's Appeals Office for a supplemental hearing during which petitioner could raise a challenge to respondent's determination of the fraud penalties. On October 19 and 30, 2018, we received status reports from respondent and petitioner, respectively. In his status report, respondent reports on events leading up to and including his conduct of a supplemental hearing (supplemental hearing), and he states that he is preparing a supplemental notice of determination. In his status report, supported by his affidavit, petitioner complains that, as part of the supplemental hearing, he was not given an in-person conference. He also complains about the conduct of the Federal District Court judge in the criminal case that preceded this case (and that, apparently, gave rise to his obligation to pay restitution). On December 3, 2018, we received a report from respondent enclosing a Supplemental Notice of Determination Concerning Action(s) Under Section 6320 and/or 6330 (supplemental notice) with respect to petitioner's 2003 and 2004 taxable years.

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The supplemental notice informs petitioner that respondent's filing of a Notice of Federal Tax Lien and the assessment of the civil penalties for the years in issue are sustained by respondent's Appeals office. The supplemental notice continues:

Upon allowing the taxpayer to challenge the Civil Fraud penalties, Appeals found that the Examiner was correct to assert Internal Revenue Code Section 6663 because all or part of the underpayment of tax required to be shown on the returns is due to fraud, and because the taxpayer was criminally convicted per IRC Section 7206(1) and 7206(2) for making a false tax return. The taxpayer presented no new facts or evidence about why he believes he is not liable for the Civil Fraud penalties.

An attachment to the supplemental notice contains a narrative of the events concluding with the supplemental notice. On August 27, 2018, Appeals Officer Jon P. Donovan sent petitioner a letter scheduling a telephone conference for September 11, 2018. Petitioner responded by letter dated August 29, 2018 (August 29 letter), in which he demanded an in-person hearing that he would record and made inflammatory statements; e.g., "that the IRS agents are well qualified liars and cannot be trusted for any reason" and the District Court judge in his criminal trial is a "reckless buffoon".¹ Moreover, he submitted no evidence to support removal of the civil fraud penalties. Mr. Donovan accorded petitioner a telephone conference on September 11, 2018, during which, pursuant to IRS guidelines, Mr. Donovan refused petitioner's request to meet in person with him. Petitioner did not address the civil fraud penalties determined by respondent. Mr. Donovan concluded:

[T]he Civil Fraud penalties were appropriate, because all or part of the underpayment of tax required to be shown on the returns is due to fraud, and because the taxpayer was criminally convicted for making a false tax return, as per Internal Revenue Code Section 7206(1) and 7206(2). The taxpayer had provided no valid oral or documentary evidence to refute the penalty assessments.

¹Attached to petitioner's October 30, 2018, status report is a copy of the letter.

Mr. Donovan also concluded that respondent had followed all legal and procedural requirements in issuing the NFTL, the civil fraud penalties were appropriate, and that filing the NFTL balanced the need for efficient collection of taxes with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary.

Following receipt of the supplemental determination, we reached out to the parties to discuss how to proceed. We were unsuccessful in our attempts in December 2018 and, following the government shutdown, in February 2019, in arranging a conference call with petitioner. For example, on February 11, 2019, petitioner did not answer at the time he had previously agreed to. In response to our attempts to reschedule the call at 5:00 P.M. on February 13, 2019, petitioner responded: "I'm working on February 13, 2019, and vacationing from 2-14-19 to March 8, 2019, please send me in writing whatever the [judge] has for this case."

We will take petitioner up on his invitation. We assume that, in asking for us to send whatever we have in writing, petitioner seeks no further hearing and has no argument to make. Considering the supplemental determination, Mr. Donovan's narrative, and the August 29 letter, we do not think that Appeals erred in sustaining the NFTL and the assessment of civil fraud penalties. Mr. Donovan reports that, during his September 11, 2018, telephone conference with petitioner, petitioner did not address the civil fraud penalties. Generally, we may not consider issues or arguments that a taxpayer does not raise as part of a section 6330 hearing. See Giamelli v. Commissioner, 129 T.C. 107, 112-113 (2007); Magana v. Commissioner, 118 T.C. 488, 493 (2002). Thus, we have nothing to review with respect to respondent's assessments of the penalties. Nor, taking into account that petitioner did not address the fraud penalties and had made inflammatory claims in the August 29 letter, did Mr. Donovan have to grant petitioner an in-person hearing. Sec. 301.6320-1(d)(2), Q&A-D6, Proced. & Admin. Regs., provides: "A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof." The regulations further explain that "a taxpayer who presents in the CDP hearing request relevant, non-frivolous reasons for disagreement with the NFTL filing will ordinarily be offered an opportunity for a face-to-face conference". Sec. 301.6320-1(d)(2), Q&A-D7, Proced. & Admin. Regs. The regulations also explain that a face-to-face hearing "will not be granted if the request for a hearing or other taxpayer communication indicates that the taxpayer wishes only to raise irrelevant or frivolous issues". Sec. 301.6320-1(d)(2), Q&A-D8, Proced. & Admin. Regs.

On the record before us, we see no reason why we should not enter decision allowing respondent to continue with collection of the restitution amount and the civil fraud penalties for petitioner's 2003 and 2004 taxable years. It is, therefore,

ORDERED that, on or before March 19, 2019, petitioner shall show cause why we should not enter decision as described.

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

Dated: Washington, D.C.
February 21, 2019