

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SAVONAROLA EDITORIALE, INC.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 10162-18 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER & DECISION

This is a “collection due process” (“CDP”) case, brought under I.R.C. section 6330. Petitioner Savonarola Editoriale, Inc. (“Savonarola”), invoking our jurisdiction under section 6330(d)(1), seek review of a determination by the Office of Appeals of the Internal Revenue Service (“IRS”) that sustains the filing of a notice of lien to collect its unpaid income tax for year 2012. Respondent, the Commissioner of the IRS, filed a motion for summary judgment on January 31, 2019; and Savonarola failed to file a response. We will grant the Commissioner’s motion.

Background

The Commissioner’s motion sets out and supports the following facts, which Savonarola has not disputed:

The unpaid liability

For 2012 Savonarola filed a Federal income tax return. The IRS determined that Savonarola had failed to report certain income that it had received; and on January 26, 2015, the IRS issued a statutory Notice of Deficiency (“SNOD”) determining a resulting deficiency of income tax. When Savonarola did not challenge the SNOD by filing a petition in this Court, the IRS assessed the

deficiency. That deficiency remains unpaid, despite the IRS having served notice and demand for payment.

The 2015 proposed levy not at issue here

On November 9, 2015, the IRS issued to Savonarola a Notice of Intent to Levy, for the year 2012. Savonarola did not request a CDP hearing at that time. Savonarola submitted to the IRS an unsigned amended return, which purported to show a reduced tax liability. The IRS did not process the unsigned return.

The 2017 lien filing at issue here

On May 11, 2017, the IRS issued to Savonarola a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 (the “Lien Notice”), notifying Savonarola that the Commissioner had filed against it a Notice of Federal Tax Lien pertaining to their tax liabilities for 2012.

Savonarola timely requested a collection due process hearing before the IRS Office of Appeals by sending the IRS a Request for a Collection Due Process Hearing (Form 12153), which the IRS received on May 19, 2017. On the Form 12153 Savonarola did not request any collection alternative (such as an installment agreement or offer-in-compromise) but rather stated:

ORIGINAL ASSESSMENT WAS BASED ON AN INCORRECT FORM 1099 ISSUED BY WELLS FARGO BANK FOR 2012. CORRECTED FORM 1099 WAS REQUESTED.

That is, Savonarola challenged its underlying tax liability for 2012.

Notice of determination and petition

On April 19, 2018, IRS Appeals issued to Savonarola a “Notice of Determination Concerning Collective Action(s) Under Section 6320 and/or 6330” The notice sustained the filing of the federal tax lien, and it reflected IRS Appeals’ determination that Savonarola had offered no collection alternatives and had a prior opportunity to dispute its underlying liability.

On October 26, 2017, Savonarola filed a petition with this Court. The only contention in the petition related to Savonarola’s position that it did not actually

owe the tax that had been determined in the SNOD. That is, Savonarola again challenged its underlying liability.

Motion for summary judgment

On January 31, 2019, the Commissioner moved for summary judgment. In sum, the motion argues that Savonarola's only contention is a challenge to its underlying liability, but that in this case such a challenge is precluded by section 6330(c)(2)(B). By order dated February 5, 2019, the Court ordered Savonarola to file a response to the Commissioner's motion "no later than February 22, 2019". Savonarola has not filed a response.

(Savonarola's petition was not accompanied by an ownership disclosure statement required by Tax Court Rule 20(c). By order dated May 31, 2018, the Court directed Savonarola to file an ownership disclosure statement pursuant to Rule 20(c), on or before July 16, 2018. For petitioner's benefit, a copy of Form 6, Ownership Disclosure Statement, was attached to the Court's order of May 31, 2018. The Court has received no filing from petitioner despite our order requiring petitioner to file an ownership disclosure statement. Our recent order of February 5, 2019, also directed Savonarola to "show cause why the Court should not dismiss the petition in this case pursuant to Rule 123", but Savonarola has not made any such showing. However, because we will grant the Commissioner's motion for summary judgment, we will simply discharge our order to show cause.)

Discussion

On its face the Commissioner's motion is well founded; its factual assertions are undisputed, its legal arguments are sound. For each of the years at issue, Savonarola reported their tax liability, which the IRS assessed, and which Savonarola has not disputed. The only disputed issue is whether Savonarola is entitled to challenge the liability that the IRS would collect.

A liability challenge may sometimes be raised in an agency-level CDP hearing (and in the subsequent Tax Court suit). Section 6330(c)(2)(B) provides:

The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

Thus, in creating the CDP remedy, Congress manifestly intended that the pre-assessment deficiency case under section 6213 (authorized when an SNOD is issued) continue to be the principal vehicle for the litigation of liability. A taxpayer who receives an SNOD determining a tax liability has available to him the remedy of a deficiency case in the Tax Court. When a taxpayer foregoes the opportunity for that challenge, it may not thereafter attempt the challenge in a CDP hearing before IRS Appeals (or in a CDP case before the Tax Court).

We note that section 6330(c)(2)(B) does not bar Savonarola from paying the tax in dispute, filing a timely administrative claim for refund, and, if it is denied, timely litigating that refund claim in the district court or the Court of Federal Claims. See 26 U.S.C. secs. 6511(a), 6532(a), 7422(a); 28 U.S.C. secs. 1346(a)(1), 1491(a)(1). But section 6330(c)(2)(B) prevents us from entertaining that challenge here.

Conclusion

For the foregoing reasons, and for the reasons stated in the IRS's motion, it is

ORDERED that the Court's order to show cause dated February 5, 2019, is hereby discharged. It is further

ORDERED that respondent's motion for summary judgment filed January 31, 2019, is granted, both on its merits and, in the alternative, on the ground that Savonarola failed to comply with the Court's order that it respond to the motion (see Rule 121(d); see also Rule 123(b)). It is further

ORDERED AND DECIDED that respondent may proceed with the collection of petitioner's Federal income tax for the year 2012 as described in the "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330" dated April 19, 2018, sustaining the lien filing for the year at issue.

**(Signed) David Gustafson
Judge**

ENTERED: **MAR 01 2019**