UNITED STATES TAX COURT
WASHINGTON, DC 20217

RICHARD J. BARA,	)	
	)	
Petitioner,	)	**CT**
	)	
v.	)	Docket No. 17107-17SL
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

O R D E R

This section 6330(d)[1] case is before the Court on respondent's motion for summary judgment, filed February 8, 2018, and petitioner's cross-motion for partial summary judgment, filed April 16, 2018, and supplemented on May 16, 2018 (petitioner's motion). A hearing was conducted on the motions in Denver, Colorado, on April 16, 2018. Petitioner, on his own behalf, and counsel for respondent appeared and were heard.

In a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated June 7, 2017 (notice), respondent determined that a levy is an appropriate collection action with respect to petitioner's outstanding 2014 Federal income tax liability (underlying liability). Petitioner does not request a collection alternative to the levy, instead, he challenges the amount of the underlying liability. The parties proceeded as though petitioner is entitled to raise that challenge in this proceeding, see sec. 6330(c)(2)(B), and we will follow their lead.

According to petitioner, he properly computed and reported his 2014 Federal income tax liability on his self-prepared 2014 Federal income tax return (return). According to respondent, the return was received and filed on October 21, 2015,

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[1]Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov.

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and the tax shown on the return is understated. According to respondent, the proper computation of petitioner's 2014 Federal income tax liability is shown in a math error notice issued to petitioner on December 28, 2015.

In order to resolve the dispute between the parties regarding the amount of the underlying liability, we consider: (1) whether petitioner properly computed the tax on his qualified dividends as shown on the return; (2) whether petitioner is liable for a section 6651(a)(2) addition to tax; (3) whether petitioner is entitled to an abatement of interest; and (4) whether certain payments petitioner claims to have made, or any portion of them, have been applied (or misapplied) to other years.

Keeping in mind that the matter is before us on cross-motions for summary judgment, we begin our analysis with familiar principles. Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. See Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994); Zaentz v. Commissioner, 90 T.C. 753, 754 (1988); Naftel v. Commissioner, 85 T.C. 527, 529 (1985). The moving party bears the burden of proving that there is no genuine issue of material fact, and factual inferences will be read in a manner most favorable to the party opposing summary judgment. See Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982).

There are obvious disputes over material facts with respect to petitioner's liability for the section 6651(a)(2) addition to tax and interest, as well as with respect to whether certain payments petitioner claims to have made towards the underlying liability were appropriately applied. So much of respondent's motion as relates to these items will be denied. Because there are no factual disputes with respect to the computation of petitioner's tax on his qualified dividends, however, and for the reasons discussed below, we find that respondent is entitled to decision on that issue as a matter of law, and respondent's motion will be treated as a motion for partial summary judgment and granted with respect to that issue. Petitioner's motion will be denied.

The undisputed facts are easily summarized.

Petitioner reported various items of income including, as relevant, qualified dividends of $9,224 on the return. He did not report any short- or long-term capital gain or loss for 2014 and did not include a Schedule D, Capital Gains and Losses, with the return. The return shows adjusted gross income of $63,561, taxable income of $46,066, sec. 1 tax of $5,070, and total tax of $5,436.

On December 28, 2015, respondent issued a math error notice to petitioner that resulted in adjusted unpaid tax due of $3,639.62. Petitioner did not request an abatement within 60 days of the issuance of the math error notice, see sec. 6213(b)(2)(A), and, in due course, respondent assessed the liability, a section 6651(a)(2) addition to tax, and interest. In the math error notice, respondent determined that petitioner incorrectly reported that his dividend income was subject to a 0% tax rate. Specifically, respondent applied a 0% tax rate to $58 of petitioner's qualified dividends, and a 15% tax rate to the remaining $9,166 of petitioner's qualified dividends.

Gross income is defined as "all income from whatever source derived". Sec. 61. Section 61(a)(7) provides that dividends are includable in gross income. For 2014, qualified dividends are subject to tax at preferential rates of 0%, 15%, or 20%. See sec. 1(h)(1)(A), (B), (C), (D), and (h)(11).

Section 1(h), in pertinent part, provides as follows:

(h) Maximum capital gains rate.
(1) In general. If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of--
(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of--
(i) taxable income reduced by the net capital gain; or
(ii) the lesser of--
(I) the amount of taxable income taxed at a rate below 25 percent; or
(II) taxable income reduced by the adjusted net capital gain;
(B) 0 percent of so much of the adjusted net capital gain (or, if less taxable income) as does not exceed the excess (if any) of--
(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 25 percent, over
(ii) the taxable income reduced by the adjusted net capital gain;

(C) 15 percent of the lesser of--
(i) so much of the adjusted net capital gain (or, if less, taxable income) as exceeds the amount on which a tax is determined under subparagraph (B), or
(ii) the excess of--
(I) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 39.6 percent, over
(II) the sum of the amounts on which a tax is determined under subparagraphs (A) and (B),
(D) 20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C),
(E) 25 percent of the excess (if any) of--
(i) the unrecaptured section 1250 gain (or, if less, the net capital gain (determined without regard to paragraph (11))), over
(ii) the excess (if any) of--
(I) the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over (II) taxable income; and
(F) 28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

For purposes of section 1(h), "'Net capital gain' means net capital gain increased by qualified dividend income", see sec. 1(h)(11)(A), while "'adjusted net capital gain' means the sum of net capital gain reduced by the sum of unrecaptured section 1250 gain, and 28-percent rate gain, plus qualified dividend income", see sec. 1(h)(3). As noted, petitioner did not report a capital gain for 2014, nor did he report unrecaptured section 1250 gain or 28% rate gain. He did, however, report qualified dividends of $9,224. Accordingly, for 2014 petitioner's net capital gain and adjusted net capital gain was $9,224.

In applying the statutory formula in section 1(h) to determine the amount of tax on petitioner's qualified dividends we first calculate the section 1(h)(1)(A) amount as follows:

(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of--
(i) taxable income ($46,066) reduced by the net capital gain ($9,224); or
(ii) the lesser of--

(I) the amount of taxable income taxed at a rate below 25 percent ($36,900); or
(II) taxable income ($46,066) reduced by the adjusted net capital gain ($9,224);

The section 1(h)(1)(A)(i) amount is $36,842 ($46,066 - $9,224). The tax computed on that amount is $5,070. The section 1(h)(1)(A)(ii) amount is $36,842 ($46,066 - $9,224). The tax computed on that amount is $5,070. Because the section 1(h)(1)(A)(i) and (ii) amounts are the same, the section 1(h)(1)(A) amount is $5,070.

Second, we calculate the section 1(h)(1)(B) amount as follows:

(B) 0 percent of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of--
(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 25 percent ($36,900), over
(ii) the taxable income ($46,066) reduced by the adjusted net capital gain ($9,224);

The section 1(h)(1)(B)(i) amount is $36,900. The section 1(h)(1)(B)(ii) amount is $36,842 ($46,066 - $9,224). Accordingly, the section 1(h)(1)(B) amount is 0% of $58 ($36,900 - 36,842), which is $0.

Third, we calculate the section 1(h)(1)(C) amount as follows:

(C) 15 percent of the lesser of--
(i) so much of the adjusted net capital gain ($9,224) (or, if less, taxable income ($46,066)) as exceeds the amount on which a tax is determined under subparagraph (B) ($58), or
(ii) the excess of--
(I) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 39.6 percent ($46,066), over
(II) the sum of the amounts on which a tax is determined under subparagraphs (A) ($36,842) and (B) ($58).

The section 1(h)(1)(C)(i) amount is $9,166 ($9,224 - $58). The section 1(h)(1)(C)(ii) is $9,166 ($46,066 - ($36,842 + 58)). Accordingly, the section

1(h)(1)(C) amount is the lesser of those amounts, $9,166, multiplied by 15%, which is $1,374.90.

The section 1(h)(1)(D), (E), and (F) amounts are all $0.

As relevant, petitioner's total tax liability for his qualified dividends is the sum of the amounts determined in section 1(h)(1)(A) through (F), which is $6,444.90 ($5,070 + $0 + $1,374.90 + $0 + $0 + $0). Petitioner reported an income tax due on his taxable income of $5,070 on his 2014 return. That amount did not include the $1,374.90 in qualified dividend tax as a result of petitioner's incorrect calculation of the statutory formula set forth in section 1(h)(1). Respondent's math error notice correctly calculated petitioner's tax on qualified dividends. Accordingly, petitioner's 2014 income tax due on his taxable income is $6,444.90 and his total tax is, therefore, $6,810.90.

For the above-stated reasons, it is

ORDERED that respondent's motion for summary judgment, filed February 8, 2018, is granted insofar as it relates to the computation of petitioner's tax on qualified dividends. It is further

ORDERED that in all other respects, respondent's motion is denied. It is further

ORDERED that petitioner's motion for partial summary judgment, filed April 16, 2018, as supplemented on May 16, 2018, is denied.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
April 23, 2019