

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JAMES W. HARRIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 3596-18 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER AND DECISION

This case is before us to review a determination (determination) by the Internal Revenue Service Appeals Office (Appeals) following a collection due process (CDP) hearing conducted pursuant to sections 6320(b) and (c) and 6330 (b) and (c).[1] The Secretary seeks to collect from petitioner his unpaid Federal income tax for his 2010, 2011, and 2012 taxable (calendar) years. Appeals determined both that respondent's notice of intent to levy was appropriate and that it was appropriate to file a notice of Federal tax lien (NFTL) in order to assist in collection of that tax. Petitioner assigns errors to the determination; respondent denies any error. We review the determination pursuant to section 6330(d)(1). Respondent has moved (1) for summary adjudication in his favor on all issues in this case (MSJ) and (2) to impose a penalty under section 6673(a)(1) (penalty motion); petitioner objects to our granting either motion. We grant both motions.

Summary judgment expedites litigation. It is intended to avoid unnecessary and expensive trials. It is not, however, a substitute for trial and should not be used to resolve genuine issues of material fact. E.g., Estate of Powell v. Commissioner, 148 T.C. 392, 397 (2017). We may grant summary judgment "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable

[1]Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended and in effect when the petition was filed, and all Rule references are to the Tax Court Rules of Practice and Procedure. We round all dollar amounts to the nearest dollar.

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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). The moving party bears the burden of proving that no genuine dispute as to any material fact exists.

In support of the MSJ, respondent relies on the pleadings, relevant documents from his administrative files, and a declaration of Michael Edwards (declaration), the Appeals officer who conducted petitioner's CDP hearing, along with attachments to the declaration. Petitioner has provided no declaration or affidavit supporting his objection to the MSJ. He supports that objection with approximately 50 pages that he represents he provided to Appeals.

Background

We draw the following facts from the pleadings, the motions, the declaration, and the documents provided by respondent from his administrative files. We believe the following facts to be uncontroverted and so find for purposes of this order and decision.

Petitioner resided in New Jersey when he filed the petition.

Petitioner made no returns of income for 2010, 2011, and 2012. Pursuant to section 6020(b), respondent prepared substitute returns for petitioner and, subsequently, sent to him notices of deficiency in tax for those years (deficiency notices). Upon petitioner's failure to petition the Tax Court in response to the deficiency notices, respondent assessed the unpaid tax along with interest and penalties and gave petitioner notice of the unpaid amounts and demanded payment. Respondent also sent petitioner notices of respondent's intent to levy and notices of his filing NFTLs and informed him of his right to a CDP hearing. In response to the those notices, petitioner submitted a Form 12153, Request for a Collection Due Process or Equivalent Hearing, relating to his unpaid income tax liabilities for 2010 through 2012. In the request, petitioner stated the reasons for his disputing respondent's collection actions to be:

1. No statutory notice of deficiency received.
2. Not the person subject to levy, pursuant to 26 U.S.C. 6331(a).
3. Not liable.

Petitioner's request was assigned to Appeals Officer (AO) Michael Edwards, who, in preparation for a telephone conference with petitioner, reviewed materials

he received from petitioner. AO Edwards reports that those materials contain the following frivolous claims made by petitioner. The provisions for levy and distraint to collect unpaid taxes found in section 6331 are "not imposed upon American Nationals[,] i.e., he has no income connected to the federal government and he is not domiciled in DC. " Also: "James W. Harris is a fictitious corporate/trust entity", "he [petitioner?] is the natural person", and "the government must produce the contract wherein he was made a surety for any tax debits [sic] of the entity." And: "[T]he * * * [Internal Revenue Code] is not self-enforcing. It is not law for the general public."

AO Edwards accorded petitioner a telephone conference and, thereafter, determined the following. The deficiency notices had been sent to petitioner at his last known address. The resulting assessments of tax were valid. Notice and demand for payment had been sent to petitioner. Although he had afforded petitioner an opportunity to challenge his underlying tax liabilities for those years, petitioner had refused to provide returns or other information from which to redetermine his tax. Petitioner had neither requested a collection alternative nor provided any information to support the same.

On January 19, 2018, Appeals issued petitioner the determination. Petitioner timely filed a petition assigning error to both the determination and to the deficiency notices. By order dated May 18, 2018, we granted respondent's motion to dismiss for lack of jurisdiction so much of this case as relates to deficiency notices on the grounds that the petition was not timely filed with respect to the deficiency notices. We also ordered that all references in the petition challenging the deficiency notices are deemed stricken. With respect to petitioner's assignment of error to the determination, he avers that (1) he never received a notice of deficiency for 2010, 2011, or 2012, (2) he never received a certified notice determination for those years, (3) the determination does not bear a certification and, thus, is not valid, and (4) the determination is not accompanied by a Form 23C, Certification of Assessment. Respondent answered the petition, denying he erred as alleged.

MSJ

By the MSJ, respondent asks for summary adjudication in his favor on all issues in this case. With respect to petitioner's averment that he never received a notice of deficiency, respondent claims on the basis of the declaration that notices of deficiency for 2010, 2011, and 2012 were sent to petitioner by certified mail at his last known address and that was a sufficient predicate for respondent to assess tax in the absence of a timely petition to this Court. See secs. 6212(b)(1), 6213(a); Davis v. Commissioner, T.C. Memo. 2018-197, at *9-*10.

With respect to petitioner's second, third, and fourth averments, concerning the determination, respondent argues that, "[w]hile petitioner's arguments are unclear, * * * [respondent] is unaware of any body of law, including sections 6320 and 6330, regulations promulgated thereunder, and case law, requiring that a notice of determination be certified or that a notice of determination be accompanied by a Form 23C [Assessment Certificate-Summary Record of Assessment]. See I.R.C. secs. 6320, 6330, Treas. Reg. sec. 301.6330-1." (Footnote omitted.) Respondent adds that, "[w]hile it does not appear that petitioner is alleging that the notice of determination was not issued via certified mail, to the extent so, Appeals properly issued same via certified mail in accordance with section 6330."

Respondent argues that there remains no issue of material fact in dispute and that he is entitled to summary judgment as a matter of law.

Petitioner's Objection

In response to the MSJ, petitioner argues that respondent has no authority to execute returns under section 6320(b) so that "the returns are null and void", "the deficiency notices are null and void", and "there is no valid case against me".

He supports his argument with approximately 50 pages that he claims he provided to Appeals to show that his claim that he had no tax liability was not frivolous. The majority of that material concerns his purported "revocation of election", "revoking his status as a federal U.S. citizen 'taxpayer'." He claims: "Affiant will no longer be 'volunteering' or 'electing' to be treated as a federal taxpayer or U.S. citizen or as a 'surety' for any government created entity connected to Form 1040 federal income tax 'contributions.'" A sample of his arguments as to why he can elect out of paying Federal income tax is as follows.

> Affiant declares here that he is a natural person man alive and well in the Constitutional Republic of New Jersey without (not within) the juristic statutory foreign jurisdiction of the IRS and nothing in the IRC applies to 'natural persons' (unless by election)
> * * * .
>
> * * * * * * *
>
> * * * Affiant, as an American National with a Revocation of Election duly sent to you and the IRS, cannot now be classified as a "taxpayer" as he is not subject to any "internal" (to D.C.) revenue tax and you are "duty bound" and required to accept Affiant's Revocation of Election documents and change Affiants's tax records to indicate "non-taxable."
>
> The IRS appears to be a "trust" domiciled in Puerto Rico as per 31 U.S.C. 1321 (a) (62) and the IRS is not an agency of the federal government as that term is defined in the Freedom of Information Act (FOIA) and the Administrative Procedures [sic.] Act in 5 U.S.C. 551(1)(C).
>
> Affiant fails to understand how the IRS, domiciled in Puerto Rico, can have any "personam," "venue," or "subject matter" jurisdiction over him without his expressed consent, which he has never granted to the IRS.

Discussion

MSJ

Rule 331, governing the commencement of a lien and levy action, provides that, the petition must contain clear and concise assignments of each and every error which the petitioner alleges to have been committed in the notice of determination and: "Any issue not raised in the assignments of error shall be deemed to be conceded."

Respondent has adequately answered petitioner's assignments and we see no need to elaborate his reasoning. Moreover, petitioner has not addressed respondent's grounds for summary adjudication and his only possibly cogent response to the MSJ is that respondent has no authority to execute returns under

section 6020(b). Case law is to the contrary. See, e.g., Winslow v. Commissioner, 139 T.C. 270, 273-274 (2012); Full-Circle Staffing, LLC v. Commissioner, T.C. Memo. 2018-66 at 41, n.16. We will grant the MSJ.

Penalty Motion

Respondent asks that we impose a penalty against petitioner under section 6673(a)(1) "as petitioner instituted this proceeding primarily for the purpose of delay, and petitioner continues to take actions, as in the present case, based on frivolous and groundless legal positions." Petitioner answers that he did not institute this proceeding for delay as evidenced by the documents he submitted in support of his objection to the MSJ.

Section 6673(a)(1) authorizes the Court to require a taxpayer to pay the United States a penalty in an amount not to exceed $25,000 whenever it appears to the Court that a proceeding before it was instituted or maintained primarily for delay, sec. 6673(a)(1)(A), or that the taxpayer's position in the proceeding is frivolous or groundless, sec. 6673(a)(1)(B). A taxpayer's position is frivolous if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law. E.g., Rader v. Commissioner, 143 T.C. 376, 392 (2014), aff'd in part, appeal dismissed in part, 616 F. App'x 391 (10th Cir. 2015).

Petitioner filed no returns for 2010, 2011, and 2012. Neither did he file tax returns for 2003 through 2006, Harris v. Commissioner, T.C. Memo. 2012-275, nor 2007 and 2009, Harris v. Commissioner, T.C. Memo. 2016-175. In the first of those cases we characterized petitioner's action in bringing that case as follows: "Petitioner, by virtue of his deliberate disregard for clearly established precedents requiring him to pay Federal income tax and file the related returns, has attempted to turn the IRS and this Court into a mockery for his shopworn tax-protester rhetoric." T.C. Memo. 2012-275, at *15. We echo that sentiment here. Petitioner's assignments are groundless, as are his objection to the MSJ. The pages attached to his response to the MSJ are filled with ludicrous, frivolous arguments. Moreover, we are firmly convinced that petitioner instituted and maintained this proceeding to delay respondent in collecting unpaid Federal income tax that petitioner owes to the United States. Petitioner has wasted the Court's and respondent's limited resources and deserves a substantial penalty. We will, therefore, require petitioner to pay a penalty under section 6673(a)(1) of $15,000.

Upon due consideration and for cause, it is

ORDERED that respondent's motion for summary judgment is granted. It is further

ORDERED that respondent's motion to impose penalty is granted, in that petitioner shall pay to the United States a penalty under section 6673(a)(1) in the amount of $15,000. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action for the taxable years 2010, 2011, and 2012, as determined in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated January 19, 2018, upon which this case is based.

(Signed) James S. Halpern
Judge

Entered: **MAY 23 2019**