Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided. RS

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WILLIAM MICHAEL CALPINO, JR. & KELLY JO CALPINO,	)	
Petitioner(s),	)	
v.	)	Docket No. 11368-18 L.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

ORDER AND DECISION

This case was commenced under section 6330(d)(1) in response to a notice of determination concerning collection action with respect to petitioners' Federal income tax liabilities for 2012 and 2013. Currently pending are respondent's motion for summary judgment, motion to permit levy, and motion to impose a penalty under section 6673. All section references are to the Internal Revenue Code in effect for the years in issue, and all rule references are to the Tax Court Rules of Practice and Procedure.

Background

Petitioners were residents of Florida at the time that they filed their petition. They were petitioners in three earlier cases in this Court. In docket No. 28447-14, filed December 1, 2014, petitioners disputed a notice of deficiency for 2011, contending among other things that they are not taxpayers and that wages paid to them were not taxable. Petitioners filed frivolous motions, including a motion for summary judgment. By order of November 2015, petitioners were warned about the applicability of a penalty under section 6673. The Court granted respondent's motion for summary judgment and imposed a $1,000 penalty under section 6673 by Order and Decision entered on December 10, 2015.

On March 4, 2016, petitioners filed a petition docketed as No. 5258-16 challenging a notice of deficiency determining their liability for a deficiency and for a section 6662 penalty for 2012. On July 12, 2016, petitioners filed a petition

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docketed as No. 15715-16 challenging a notice of deficiency determining their liability for a deficiency and for a section 6662 penalty for 2013. In the petitions in each case, petitioners set forth a series of stale and long-repudiated frivolous positions to the effect that wages are not taxable, that they were not taxpayers or "U. S. Persons" or "U.S. Residents" and thus they were not liable for tax on their income, and that the Internal Revenue Service (IRS) had not followed proper procedures. In each case, respondent filed a motion to impose sanctions under section 6673.

Petitioners' cases for 2012 and 2013 were set for trial on March 1, 2017. In each case, petitioners filed a pretrial memorandum repeating their frivolous arguments and, among other things, quoting the requirement under section 6751(b)(1) that "[n]o penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate." Petitioners failed to appear for trial.

Respondent filed motions to dismiss for lack of prosecution, and represented that petitioners had advised respondent that they would not be appearing. In docket No. 5258-16, the Court entered an order and order of dismissal and decision on March 6, 2017, denying respondent's motion for sanctions but advising petitioners that they are subject to the imposition of a section 6673(a)(1) penalty not to exceed $25,000 if in other cases pending before this Court they advance positions similar to the ones advanced in that case. The Court granted respondent's motion to dismiss and entered a decision that there is a $6,289 deficiency and that petitioners are liable for a $1,236.45 section 6662(a) penalty for 2012. In docket No. 15715-16, the Court entered an order and order of dismissal and decision on March 7, 2017, denying respondent's motion for sanctions and again warning petitioners about the applicability of section 6673. The Court granted respondent's motion to dismiss and entered a decision that there is a $7,106 deficiency and that petitioners are liable for a $1,360.21 section 6662(a) penalty for 2013. Petitioners did not appeal either decision and they became final under section 7481(a)(1).

On September 14, 2017, the IRS sent to petitioners Final Notices - Notice of Intent to Levy and Notice of Your Right to a Hearing with respect to the amounts assessed for 2012 and 2013 as a result of the decisions described above. (A separate notice was sent regarding section 6702 penalties assessed against petitioner William Michael Calpino, Jr., but that notice is not the subject of the petition in this case.) Petitioners submitted Form 12153, Request for a Collection

Due Process or Equivalent Hearing. They did not propose a collection alternative. Instead petitioners attached to the Form 12153 a letter outlining a series of frivolous arguments, again arguing that they are not taxpayers and that they are not subject to levy and are not even "persons" as defined in the Code.

On March 7, 2018, an IRS Office of Appeals (Appeals) settlement officer (SO) sent petitioners a letter scheduling a telephone conference, requesting financial information if petitioners wanted a collection alternative, and requesting that petitioners file their 2015 tax return. Petitioners requested a conference by correspondence. By letter sent April 5, 2018, the SO repeated her requests for financial information and petitioners' 2015 return. On April 18, 2018, petitioners sent a letter to the SO in which they refused to provide the requested financial information and continued to assert frivolous arguments.

On May 10, 2018, Appeals sent petitioners Letters 3193, Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code, sustaining the proposed levy. The notices stated that assessments had been properly made, that all legal and administrative requirements for the proposed action had been met, and that Appeals had considered whether the proposed action balances the need for the efficient collection of the taxes with the legitimate concern of the taxpayer that collection action be no more intrusive than necessary. The notices also stated that petitioners had proposed no alternatives to collection and that they had submitted only frivolous arguments. After citing section 6330(c)(2)(B), the notices stated: "[o]ur initial review of the administrative records indicates you did have a prior opportunity when you received the Statutory Notice of Deficiency; and petitioned the United States Tax Court; therefore, you are precluded from raising the underlying tax liability during the CDP Appeal Process."

The petition in this case was filed June 8, 2018, and repeated the same litany of frivolous arguments made by petitioners in their previous cases, to wit, denying that petitioners are taxpayers, U.S. persons or residents living in a State of the United States, and asserting procedural errors. Attached to the petition was the notice of determination relating to their income taxes for 2012 and 2013. Petitioners filed a frivolous motion to dismiss for lack of jurisdiction and a frivolous motion for summary judgment that were similar to those denied in docket No. 28447-14 and which led to the imposition of a penalty in that case.

Respondent filed a motion for summary judgment supported by the declaration of the SO, a motion to permit levy, and a motion to impose a penalty

under section 6673. Petitioners responded to each motion with a repetition of their frivolous arguments that they are not members of the class of persons subject to levy or to other provisions of the Internal Revenue Code.

The Court directed respondent to supplement the motion for summary judgment to address whether the SO had verified that the requirements of section 6751(b) had been met with respect to the section 6662 penalties assessed for 2012 and 2013. Respondent filed a supplement to the motion for summary judgment taking the position that "[s]ince the penalties were the subject of prior Tax Court proceedings that had collateral estoppel or res judicata effect" verification under section 6330(c)(1) is not required for compliance with section 6751(b).

Respondent's Motion for Summary Judgment

Rule 121(b) provides that a decision shall be rendered in response to a motion for summary judgment if the record before the Court shows that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law. See Fla. Peach Corp. v. Commissioner, 90 T.C. 678 (1988).

Petitioners have not identified a genuine dispute as to any material fact and have made stale and long-repudiated legal arguments based on their convoluted, distorted, and erroneous interpretations of various statutes. However, the Court raised and respondent addressed the question of whether the SO adequately performed an investigation and verification as required by section 6330(c)(1). To be entitled to judgment as a matter of law, respondent must show satisfaction of the verification requirement.

Section 6330(c) specifies the matters considered at a hearing under section 6330(b), and section 6330(c)(1) directs the SO to "obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met." That requirement, however, does not include substantive review of the procedural steps that have been verified by the SO or of the SO's thought process. Blackburn v. Commissioner, 150 T.C. 218, 222-223 (2018). The Appeals representative need only verify that the administrative record reflects compliance with administrative procedures. See Roberts v. Commissioner, 329 F.3d 1224, 1228 (11th Cir. 2003), aff'g per curiam 118 T.C. 365 (2002); Craig v. Commissioner, 119 T.C. 252, 262 (2002); Davis v. Commissioner, 115 T.C. 35, 40-41 (2000).

Here the SO reviewed transcripts of petitioners' accounts and verified that the assessed amounts of income taxes and related interest and penalties were reflected in the administrative record. She noted petitioners' cases for 2012 and 2013, and concluded that petitioners were not entitled to dispute the underlying liabilities because of section 6330(c)(2)(B).

Section 6330(c)(2)(B) incorporates the purposes of res judicata and collateral estoppel into the statutory provisions for review of collection actions but does not require a final judgment to be applicable; that provision merely requires the prior opportunity to contest an underlying liability. Petitioners' docketed cases for 2012 and 2013 were their prior opportunities to challenge their underlying liabilities for those years, including the section 6662 penalties determined in the statutory notice and in the final decisions in those cases. They first challenged those liabilities with frivolous arguments, defaulted when the time came for trial, and did not appeal; thus the decisions became final.

Here the Appeals representative verified that assessment procedures had been followed with respect to the final decisions in the deficiency cases. Petitioners have not shown any reason to question the regularity of those procedures and have not shown any other abuse of discretion by the SO. They have raised only their stale frivolous arguments. Respondent is entitled to judgment as a matter of law.

Respondent's Motion to Permit Levy

Section 6330(e) provides for suspension of levy actions that are the subject of a section 6330(c) hearing for the period during which such hearing and appeals therein are pending. Because inquiries into the liabilities determined by final decisions in the deficiency cases are barred by section 6330(c)(2)(B), the normal stay of collection activities in a levy action may not apply if the Court "determines that the Secretary has good cause not to suspend the levy." Sec. 6330(e)(2). In Burke v. Commissioner, 124 T.C. 189 (2005), we granted respondent's motion to permit levy where "the taxpayer has used the collection review procedure to espouse frivolous and groundless arguments and otherwise needlessly delay collection." Id. at 197. The Court also considered the taxpayers' abuse of the Court's procedures in an earlier deficiency case. We concluded that: "[t]o permit any further delay in the collection process would be unconscionable." Id.; see Carothers v. Commissioner, T.C. Memo. 2013-165; Buckardt v. Commissioner, T.C. Memo. 2012-170. We reach the same conclusion here as to those amounts

assessed as a result of the final decisions in the deficiency cases. Respondent's motion to permit levy will be granted.

Respondent's Motion for a Penalty

Section 6673(a)(1) provides for a penalty not to exceed $25,000 whenever it appears to the Tax Court that (A) proceedings before it have been instituted or maintained primarily for delay or (B) the taxpayer's position is frivolous or groundless.

We need neither repeat nor address the arguments made by petitioners in each of the cases they have filed in this Court since late 2014. Petitioners' contentions are clearly frivolous, as explained in innumerable cases over several decades. Petitioners' theory that citizens and residents of various States are not subject to Federal jurisdiction because the applicable statutes include certain Federal territories in the statement of coverage is an argument that "includes" means "only" and excludes anything else. Such interpretative arguments have been consistently rejected in strong terms, even in judicial opinions sustaining criminal convictions. See, e.g., United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987) (per curiam) ("utterly without merit"); United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985) ("inane" and "preposterous"); United States v. Rice, 659 F.2d 524, 528 (5th Cir. 1981) ("frivolous non-sequitur"). See United States v. Kruger, 923 F.2d 587, 587-588 (8th Cir. 1991)); Crain v. Commissioner, 737 F.2d 1417, 1418 (5th Cir. 1984) (per curiam) (granting penalties against taxpayer whose spurious arguments on taxation and jurisdiction were "unsupported" and "meritless").

The petitioners' argument that wages are exempt from taxation has been described as not merely frivolous but "beyond frivolous" and "frivolous squared". See, e.g., United States v. Cooper, 170 F.3d 691, 692 (7th Cir. 1999). That argument has also led to sanctions for frivolous appeals. See, e.g., Waters v. Commissioner, 764 F.2d 1389 (11th Cir. 1985); Martin v. Commissioner, 756 F.2d 38 (6th Cir. 1985), aff'g T.C. Memo. 1983-473; Perkins v. Commissioner, 746 F.2d 1187 (6th Cir. 1984), aff'g T.C. Memo. 1983-474. These arguments are so well refuted and stale that specific response to them is neither necessary nor justifiable, and responding merely increases the appropriate penalty under Code section 6673. See, e.g., Wnuck v. Commissioner, 136 T.C. 498, 505-510 (2011). The Court in Wnuck explained why we will not engage in an extensive dialogue with taxpayers who persist in disregarding decades of case law characterizing their arguments as frivolous. It is apparent that petitioners are among many who refuse

to accept the judgments of the courts. No further discussion of petitioners' stale theories is warranted.

Petitioners were warned here and in prior cases and were previously penalized $1,000 under section 6673. Respondent's motion will be granted and a penalty of $25,000 will be awarded to the United States in this case.

Upon due consideration and for cause, it is hereby

ORDERED that respondent's motion for summary judgment is granted, and the notice of determination on which this case is based is sustained. It is further

ORDERED that respondent's motion to permit levy is granted, and collection may proceed in accordance with Section 6330(e)(2). It is further

ORDERED that respondent's motion to impose a penalty is granted. It is further

ORDERED AND DECIDED that petitioners shall pay to the United States a penalty under section 6673(a)(1) in the amount of $25,000.

(Signed) Mary Ann Cohen
Judge

ENTERED: **JUL 09 2019**