

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

ALAN DAVID COOPER,)
)
 Petitioner,)
)
 v.) Docket No. 4123-19.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER AND DECISION

The sole issue in this case (see Doc. 17) is the challenge of petitioner Alan David Cooper to the IRS’s statutory notice of deficiency (“SNOD”; Doc. 22, Ex. A) dated December 12, 2018, which determined a deficiency in income tax for the year 2015. Now before the Court are: (1) the Commissioner’s motion (Doc. 21) for summary judgment and for the imposition of a penalty under section 6673(a)(1); (2) Mr. Cooper’s motion (Doc. 25) “to dismiss this case without prejudice”; and (3) Mr. Cooper’s motion (Doc. 27) “to dismiss and/or vacate this case with prejudice in this matter against Respondent.” We will grant the Commissioner’s motion as to the deficiency (but not the penalty), will deny Mr. Cooper’s motions, and will enter decision in favor of the Commissioner.

Background

The SNOD

Mr. Cooper evidently filed a Federal income tax return for 2015; but by his own admission, he declined to report on that return wage income from Wal-Mart, Social Security benefits, and pension payments from a Wausau Paper Corp. pension plan. The payers reported those payments; Mr. Cooper does not deny he received them; but he contended that they are not “federally connected” and that they therefore are not taxable to him. (See Doc. 22, Exs. B, C, and D.)

On December 12, 2018, the IRS issued to Mr. Cooper an SNOD that adjusted his 2015 income to include those payments, determined a deficiency of \$2,430 in income tax for the year 2015, and determined an addition to tax of \$239 pursuant to section 6651(a)(1) for failure to timely pay income tax.

Prior proceedings in this case

Mr. Cooper filed in this Court a petition (Doc. 1) and an amended petition (Doc. 3) purporting to raise disputes as to 26 years (i.e., 1970-1974 and 1997-2017). Mr. Cooper's petitions cite "Cracking the Code: The Fascinating Truth About Taxation in America". Mr. Cooper filed a motion for summary judgment (Doc. 5) that likewise cites and extols "Cracking the Code". The Court denied the motion summarily without requiring the Commissioner to respond and without issuing an opinion. (See Doc. 6.)

In response to a motion to dismiss filed by the Commissioner (Doc. 13), we dismissed all of Mr. Cooper's claims except his challenge to the SNOD for 2015. Our order of June 21, 2019 (Doc. 17), observed:

[P]etitioner proffered oft-rejected challenges to the authority of the Internal Revenue Service (IRS) in the context of income tax returns and related assessments. Thus, under the circumstances, the Court sees no need to catalog petitioner's arguments and painstakingly address them. As the Court of Appeals for the Fifth Circuit has remarked: "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit". Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984).

The Commissioner's motion

On September 19, 2019, the Commissioner filed a motion (Doc. 21) for summary judgment and for the imposition of a penalty under section 6673(a)(1). The motion shows that Mr. Cooper received the income at issue and that his arguments against the asserted deficiency are frivolous. Our order of September 23, 2019 (Doc. 23), advised Mr. Cooper as follows:

The positions in Mr. Cooper's petition, amended petition, and motion for summary judgment are evidently inspired by the book "Cracking the Code". This is a book that promotes pseudo-legal arguments that

the courts have uniformly rejected and that have yielded its author a criminal conviction. Our opinion in Waltner v. Commissioner, T.C. Memo. 2014-35, gives an explication of errors and fallacies in that book....

Our order required Mr. Cooper to file, by October 21, 2019, a response to the Commissioner's motion. Our order stated:

[Mr. Cooper] should advance any good-faith arguments that he can make to show that he did not receive the items of income that were adjusted in the SNOD [i.e., the IRS's statutory notice of deficiency], or that he is entitled to deductions or credits that might reduce his 2015 liability, or that he is not liable for the failure-to-timely-file addition to tax....

In his response to the Commissioner's motion, Mr. Cooper should also make any good-faith argument he wishes to make to the effect that he should not be held liable for the penalty under section 6673(a)(1).

Our order also stated "that, no later than November 8, 2019, the Commissioner shall file a reply to Mr. Cooper's response (or, if he has not filed a response, then a status report so stating)."

Mr. Cooper did not file a response to the Commissioner's motion in compliance with our order. (He has made other filings discussed below.) Consequently, on October 22, 2019 (the day after Mr. Cooper's response had been due), the Commissioner filed a status report (Doc. 24) that stated, "Petitioner has not filed a response by the October 21, 2019 deadline. Accordingly, respondent respectfully requests that this Court grant its motion for summary judgment and to impose an I.R.C. § 6673(a)(1)(B) penalty."

Mr. Cooper's first motion to dismiss

On October 22, 2019, Mr. Cooper filed his own motion (Doc. 25, dated October 15 and served October 16, 2019) that asked the Court to issue "an order to dismiss this case without prejudice in this matter to either side." We believed it was possible that this might be Mr. Cooper's attempt to concede the case, which would have rendered moot the Commissioner's motion on the merits. However,

Mr. Cooper's inclusion of the phrase "without prejudice" seemed (depending on what he meant by it) problematic under section 7459(d) (discussed below).

Therefore, by our order of October 23, 2019, we ordered that, by November 8, 2019, "respondent shall file a response" and that by November 22, 2019, "petitioner shall file a reply. That reply shall explain petitioner's intention in requesting dismissal 'without prejudice'."

Mr. Cooper's second motion to dismiss

On October 28, 2019, Mr. Cooper filed another motion (Doc. 27, dated October 22 and served October 24, 2019) that is entitled "Motion for Dismissal and to Vacate Respondent's Status Report" and that asks for the Court to issue "an order to dismiss and/or vacate this case with prejudice in this matter against Respondent." The gist of the motion appears to be that the Commissioner's status report (Doc. 24)--which stated (correctly) that Mr. Cooper had filed no response to the motion for summary judgment--had deliberately ignored his filing (Doc. 25), perhaps with "some sort of fraud and/or collusion in the USTC".

Apparently Mr. Cooper maintains (incorrectly) that his first motion to dismiss (Doc. 25) constituted a response to the Commissioner's motion for summary judgment, in compliance with our order (Doc. 23), but it did not. He therefore criticizes the Commissioner's status report as overlooking his filing.

Mr. Cooper's latest filing

On November 21, 2019, Mr. Cooper filed a document (Doc. 29) that is apparently intended to comply with our order of September 23, 2019 (Doc. 23), and to explain his first motion to dismiss. It states: that "Petitioner believes that it is in his best interest to continue to go through the CDPH [collection due process hearing] route", rather than this deficiency case; that where a "suit [is] dismissed, 'without pre[j]udice,' it is meant as declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost"; and that "Petitioner is neither a Small Business nor self-employed as that term is used in the IRS Code." (The last of these points is evidently a succinct statement of a frivolous "tax protestor" argument. See, e.g., Timmins v. Commissioner, T.C. Memo. 2017-86, at *4-*5.)

Discussion

I. The Commissioner's motion for summary judgment

The Commissioner's motion for summary judgment (Doc. 21) demonstrated that Mr. Cooper received income that he did not report on his tax return, as was determined in the SNOD. Mr. Cooper did not make any refutation of these facts. His only contrary contentions have been frivolous. We will therefore grant the Commissioner's motion as to the deficiency.

II. Mr. Cooper's first motion to dismiss

Mr. Cooper's first motion to dismiss (Doc. 25) asks us to dismiss this case because (see Doc. 29) he would now prefer to use another forum (a CDP hearing that he believes he can obtain) to maintain his challenge against the IRS's determination of his 2015 liability. We cannot see, from what he states, that a CDP hearing could be actually available to him or that, if it were, he would be able to challenge his 2015 liability in such a hearing, since he received an SNOD for 2015 (see sec. 6330(c)(2)(B)).

But whether or not a CDP hearing for 2015 could be available to Mr. Cooper, and whether or not section 6330(c)(2)(B) would bar a liability challenge in such a hearing, we must deny his motion to dismiss this case "without prejudice", by which he evidently means that the dismissal of this case would leave him without any loss of the right to litigate elsewhere his 2015 income tax liability. His intention is contrary to section 7459(d), which provides as follows:

(d) Effect of decision dismissing petition. If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary. An order specifying such amount shall be entered in the records of the Tax Court unless the Tax Court cannot determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction. [Emphasis added.]

A taxpayer who receives an SNOD and files a timely deficiency case in the Tax Court thereby halts the IRS's assessment of his deficiency (and the subsequent collection activity that could follow assessment) and receives the opportunity to have his liability redetermined by the Tax Court. But the consequence of his

timely filing that petition is that his case will not be dismissed without having his liability redetermined in the Tax Court. Mr. Cooper's strategy, if it were permissible, would use the filing of a Tax Court petition to halt the deficiency process but would then derail the deficiency process by dismissal "without prejudice". Section 7459(d) prevents this approach. We will therefore deny Mr. Cooper's first motion to dismiss.

III. Mr. Cooper's second motion to dismiss

Mr. Cooper's second motion to dismiss (Doc. 27) makes a misguided criticism of the Commissioner's status report (Doc. 24), and we therefore will deny the second motion to dismiss to the extent it asks us to dismiss or vacate the status report.

The second motion to dismiss asks us "to dismiss and/or vacate this case with prejudice in this matter against Respondent" (emphasis added). If this means we should dismiss the case without redetermining the deficiency, then the second motion must be denied for the same reason as the first motion--i.e., section 7459(d). If the motion asks us to sustain the SNOD and to redetermine the deficiency as zero because of respondent's supposed misbehavior, then we must also deny the motion on that ground. In the first place, the status report does not reflect the wrong-doing that Mr. Cooper supposes; but even if it did, he does not cite any authority for the proposition that, as a sanction for respondent's supposed misbehavior in the litigation, we could determine a zero deficiency in the petitioner's income tax. We will not do so.

IV. The Commissioner's motion for sanctions

Congress enacted the penalty provision in section 6673 in order to deter frivolous litigation and to induce taxpayers to conform their conduct to settled principles of law before pursuing litigation. Under section 6673(a)(1), the Court may impose a penalty of up to \$25,000 when a taxpayer pursues an action in the Tax Court and the Court determines that either: (1) the taxpayer instituted or maintained litigation in the Court primarily for delay; (2) the taxpayer's litigation position is frivolous or groundless; or (3) the taxpayer unreasonably failed to pursue administrative remedies before pursuing judicial relief in the Court.

Mr. Cooper's position is frivolous, and he did not ever raise in this case any non-frivolous arguments in addition to his frivolous arguments. The Tax Court itself advised him that his position was frivolous no later than our order of June 21,

2019 (Doc. 17), and we repeated and elaborated the warning in our order of September 23, 2019 (Doc. 23). It seems clear that, since at least as early as the time that he received those warnings, his persistence with this suit has been primarily for delay. When he received our September 2019 warning that his arguments were frivolous and that raising such arguments could lead to the imposition of penalties, he did not heed that warning but instead attempted a tactical retreat (not a surrender) by his attempts to have the case dismissed “without prejudice”--precisely so that he could continue making his frivolous arguments in other cases. Imposing a penalty in this case would not be an abuse of our discretion.

However, as far as we know, Mr. Cooper has not previously taken frivolous positions in litigation. Assuming therefore that this is the first instance in which he has done so, we exercise our discretion not to impose a penalty. We warn Mr. Cooper, however, that if he should repeat this conduct in the future, he should expect to be held liable for a penalty of as much as \$25,000.

It is

ORDERED that Mr. Cooper’s motions to dismiss (Docs. 25, 27) are both denied. It is further

ORDERED that the Commissioner’s motion for summary judgment and for a penalty under section 6673(a)(1) (Doc. 21) is denied in part, in that we do not impose a penalty under section 6673(a)(1), but is otherwise granted in part, in that we sustain the determinations in the SNOD. It is further

ORDERED AND DECIDED that there is due from petitioner for the taxable year 2015 a deficiency in income tax of \$2,430 and an addition to tax of \$238.70 pursuant to section 6651(a)(1).

**(Signed) David Gustafson
Judge**

ENTERED: **DEC 05 2019**