

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MARK MARINEAU,)	
)	
Petitioner,)	
)	CZ
v.)	Docket No. 9469-16 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This collection case is before us on cross-motions for summary judgment. The Commissioner argues that he should be granted summary judgment because Mr. Marineau failed to properly challenge his underlying liability or the Commissioner’s collection actions. Mr. Marineau argues that we should grant him summary judgment because the Commissioner did not send the notice of deficiency that gave rise to the underlying liability to his last known address. Because the notice of deficiency was sent to Mr. Marineau’s last known address within the meaning of the Internal Revenue Code and because Mr. Marineau did not properly challenge any issues during his collection proceeding, we deny Mr. Marineau’s motion for summary judgment and grant the Commissioner’s motion.

Background

Mr. Marineau did not file a tax return for 2012.

In May 2014 Mr. Marineau submitted to the IRS a Form 8822, Change of Address, to update his address to a Pensacola, Florida address. On June 8, 2015, Mr. Marineau mailed a letter to the Washington, D.C. office of the Internal Revenue Service informing the IRS of his change of address from Pensacola, Florida to a P.O. Box in Fraser, Michigan. The letter contains Mr. Marineau’s old address, his new address, and his signature. The letter was delivered to Washington, D.C. on June 15, 2015.

On June 18, 2015, the Commissioner sent to Mr. Marineau’s Pensacola, Florida address a notice of deficiency for 2012. Although mailed on June 18, the

notice was dated June 22, 2015. The notice explained that because Mr. Marineau had not filed a tax return for 2012, the Commissioner issued a substitute for return and determined a deficiency.

Although the IRS mailed the notice of deficiency to Mr. Marineau's Pensacola, Florida address, the United States Postal Service rerouted the notice to Roseville, Michigan. The notice went unclaimed, and the postal service returned the notice to the IRS on July 29, 2015.

The Commissioner then began his collection efforts. He sent Mr. Marineau a Notice of Intent to Levy and Notice of Your Right to a Hearing dated December 14, 2015. Mr. Marineau responded with a Request for a Collection Due Process Hearing. On the form, Mr. Marineau requested a face-to-face hearing and challenged his underlying tax liability. He did not check any boxes asking the Commissioner to consider collection alternatives.

In response to Mr. Marineau's request for a collection hearing, the settlement officer assigned to his case sent Mr. Marineau a letter acknowledging Mr. Marineau's request for a face-to-face hearing. The letter further informed Mr. Marineau that he could not qualify for such hearing until he provided financial information and completed Forms 1040, Individual Income Tax Return for 2013 and 2014. The settlement officer scheduled a hearing by phone for March 1, 2016.

Mr. Marineau did not call the settlement officer for his scheduled collection hearing.

The Commissioner issued Mr. Marineau a notice of determination upholding the proposed levy on March 17, 2016. The notice stated Mr. Marineau did not submit information necessary to qualify for collection alternatives or a face-to-face hearing. It also stated that Mr. Marineau failed to provide information or substantiate a different tax liability.

Mr. Marineau filed a timely petition while residing in Pensacola, Florida. In his petition, Mr. Marineau claimed that the Commissioner did not verify that all applicable law and procedure was followed and did not allow Mr. Marineau the opportunity to challenge his underlying liability. Both parties moved for summary judgment which the Court denied. We then remanded this case to Appeals to give Mr. Marineau the opportunity to challenge his underlying liability and for the Commissioner to verify requirements of law and applicable procedure were met.

Upon remand, the Commissioner sent Mr. Marineau a letter informing him that a supplemental collection hearing had been scheduled for May 10, 2018. The letter granted Mr. Marineau a face-to-face hearing on the condition that he provide an original, signed Form 1040 for 2012. The letter also reiterated the informational requirements and forms necessary to consider collection alternatives. Mr. Marineau responded to the letter and acknowledged the hearing date, but he did not appear for his face-to-face collection hearing.

The Commissioner issued a supplemental notice of determination sustaining the levy for 2012.

The Commissioner again moved for summary judgment arguing (1) Mr. Marineau is precluded from challenging his underlying liability because he did not properly raise the issue during his collection hearings; (2) Mr. Marineau did not provide the requisite financial information to qualify for a collection alternative; and (3) the collections officer properly verified the notice of deficiency was sent to Mr. Marineau's last known address.

Mr. Marineau also moved for summary judgment again. In his motion, Mr. Marineau argues that the Commissioner did not send the notice of deficiency to Mr. Marineau's last known address. Mr. Marineau claims he properly updated his address with the IRS before the Commissioner sent the notice of deficiency. Mr. Marineau alternatively claims that the certified tracking number on the notice of deficiency indicates the notice was not sent by the IRS, but rather "by another sender from another zip code to an unknown recipient."

Discussion

Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in a controversy.¹ We may grant summary judgment only if there is no genuine dispute of material fact.² The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute of material fact.³ When a motion for summary judgment is properly made

¹Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

²Rule 121(b).

³Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

and supported, the nonmoving party may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts showing a genuine dispute.⁴

I. Right to Challenge Underlying Liabilities

Mr. Marineau disputes his underlying liabilities. In a collection case, a taxpayer may challenge the existence or amount of the underlying liability if the taxpayer did not have a previous opportunity to do so.⁵ This Court will consider a taxpayer's challenge to an underlying liability only if the taxpayer properly raised the issue at the collection hearing.⁶ An issue is not properly raised if the taxpayer does not ask Appeals to consider the underlying liability; also, if the taxpayer requests consideration but fails to present Appeals with evidence of the issue after the taxpayer is given reasonable opportunity to do so, then the issue has not been properly raised.⁷ If the taxpayer properly raises the underlying liability, we will review the Commissioner's determination de novo.⁸ If the taxpayer does not properly raise the issue, we will review the determination only for an abuse of discretion.⁹

Mr. Marineau claims he never received his notice of deficiency for 2012. If true, Mr. Marineau had the right to challenge his underlying liability with the Appeals Office. But Mr. Marineau did not participate in his first collection hearing in March 2016. Nor did he submit the requested documents to substantiate a tax liability different from the liability that had already been determined in the notice of deficiency. We remanded this case to allow Mr. Marineau to contest his underlying liability. On remand, he did not participate in the hearing or submit the

⁴Rule 121(d).

⁵Sec. 6330(c)(2)(B).

⁶Giamelli v. Commissioner, 129 T.C. 107, 114-115 (2007); see secs. 301.6320-1(f)(2), Q & A-F3, 301.6330-1(f)(2), Q & A-F3, Proced. & Admin. Regs.

⁷McRae v. Commissioner, T.C. Memo. 2015-132, at *8; see secs. 301.6320-1(f)(2), Q & A-F3, 301.6330-1(f)(2), Q & A-F3, Proced. & Admin. Regs.; see also Zook v. Commissioner, T.C. Memo. 2013-128, at *6 (finding that because the taxpayer did not provide Appeals with documents of the disputed liabilities, the taxpayer did not properly raise her underlying liabilities on Appeal and therefore her underlying liabilities were not properly before this Court).

⁸Goza v. Commissioner, 114 T.C. 176, 181-182 (2000).

⁹Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. at 182.

necessary documentation so the settlement officer could consider his underlying liabilities.

Because Mr. Marineau did not participate in his collection hearings or submit the necessary documents, he failed to properly raise his underlying liability. Because Mr. Marineau failed to properly raise his underlying liability, we cannot consider that issue, but we still review the Commissioner's collection determination for an abuse of discretion.

II. Abuse of Discretion

Because Mr. Marineau's underlying liability is not at issue, we review the Commissioner's collection determination for an abuse of discretion. When making a collection determination, the Commissioner must (1) verify that requirements of applicable law and administrative procedure have been met, (2) consider issues raised by the taxpayer, and (3) decide whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.¹⁰ To prove abuse of discretion, the taxpayer must show the Commissioner's decision was arbitrary, capricious, or without sound basis in law or fact.¹¹

a. Last Known Address

To determine if applicable law has been met, the settlement officer must verify that the Commissioner sent the notice of deficiency to the taxpayer's last known address.¹² A taxpayer's last known address is generally "the address that appears on the taxpayer's most recently filed and properly processed Federal tax return".¹³ A taxpayer may notify the IRS of an address change by providing clear and concise notification of the taxpayer's new address.¹⁴ Clear and concise notification is a statement signed by the taxpayer notifying the Commissioner of the taxpayer's change of address.¹⁵ The notification must also include the

¹⁰Sec. 6330(c)(3).

¹¹Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

¹²Hoyle v. Commissioner, 131 T.C. 197, 200 (2008), supplemented by 136 T.C. 463 (2011).

¹³Sec. 301.6212-2(a), Proced. & Admin. Regs.

¹⁴Sec. 301.6212-2(a), Proced. & Admin. Regs.

¹⁵Rev. Proc. 2010-16, sec. 5.04(1)(a), 2010-19 I.R.B. 664, 666.

taxpayer's full name, old address, and social security number.¹⁶ A Form 8822, Change of Address, may be used by the taxpayer to provide clear and concise notification to the IRS of a change of address.¹⁷

To determine the taxpayer's last known address we focus on what the Commissioner knew at the time he sent the notice of deficiency.¹⁸ The last known address is the address, in light of surrounding facts and circumstances, the Commissioner reasonably believes the taxpayer wishes the notice to be sent.¹⁹ If a notice of deficiency is mailed to the taxpayer's last known address, the taxpayer's actual receipt of the notice is immaterial.²⁰ Additionally, the Commissioner is not required to ascertain a taxpayer's correct mailing address after the postal service returns a notice of deficiency for failure to deliver.²¹

Mr. Marineau argues that the Commissioner did not send the notice of deficiency to Mr. Marineau's last known address. He claims that he sent the Commissioner a clear and concise notification of his Fraser, Michigan address when he mailed the handwritten letter to the Washington, D.C. office of the IRS. Mr. Marineau therefore believes the Commissioner erred when he mailed the notice of deficiency to Florida.

Mr. Marineau successfully established his Pensacola, Florida address as his last known address when he mailed the Form 8822 to the IRS in 2014. Because Mr. Marineau did not file a tax return after that date and before the notice of deficiency was issued, he did not update his address by filing a return. Also, there is no record of Mr. Marineau submitting any written or oral notice of an address change other than his June 8, 2015 letter to Washington, DC.

Mr. Marineau's letter lacked some required elements of a clear and concise notification that are required by Revenue Procedure 2010-16. That revenue procedure states that a clear and concise notification must contain the taxpayer's new address, old address, full name, signature, and taxpayer identification or social security number. Mr. Marineau did not include his middle name or social security

¹⁶Rev. Proc. 2010-16, sec. 5.04(1)(a).

¹⁷Rev. Proc. 2010-16, sec. 5.04(1)(c).

¹⁸King v. Commissioner, 88 T.C. 1042, 1048 (1987), aff'd, 857 F.2d 676 (9th Cir. 1988)

¹⁹Weinroth v. Commissioner, 74 T.C. 430, 435 (1980).

²⁰Snodgrass v. Commissioner, T.C. Memo. 2016-235, at *10.

²¹Monge v. Commissioner, 93 T.C. 22, 34 (1989).

number in his letter. Therefore, the letter does not meet all of the criteria set forth in Rev. Proc. 2010-16.

We need not consider whether Mr. Marineau's omissions were material, because his letter was not received in time to process it before the notice of deficiency was issued. Mr. Marineau sent his letter to the Commissioner's Washington, D.C. headquarters, where it was delivered on June 15, 2015, three days before the notice of deficiency was issued.

Revenue Procedure 2010-16 sets forth the timing for when a clear and concise written notification must be processed. A clear and concise notification will update a taxpayer's address once it is properly processed.²² A clear and concise notification is properly processed 45-days after the date of receipt by: (1) the IRS Submission Processing Campus serving the taxpayer's old address; (2) the Customer Service Division in the local area office; or (3) the IRS employee in contact with the taxpayer regarding a return or adjustment to the taxpayer's account.²³

Even if Mr. Marineau had sent his letter to his local area office or directly to the IRS Submission Processing Campus serving his old address, the letter would not have been received in time to properly process the address change. The three-day window is significantly less than the 45-day processing period set forth in Rev. Proc. 2010-16. This did not give the Commissioner sufficient time to update Mr. Marineau's address.

Mr. Marineau argues that he should not be bound by the 45-day processing window outlined in Rev. Proc. 2010-16. In support, Mr. Marineau quotes Macey's Jewelry Corp. v. United States, 387 F.2d 70, 72 (5th Cir. 1967), which states **“Revenue rulings, however, are not authority** having the force of law, to be automatically applied in each and every case.” Mr. Marineau conflates a “revenue ruling”—an IRS interpretation of tax law—with a “revenue procedure”—an official statement of procedure issued by the IRS. While it is also true that this Court is not bound by revenue procedures, we often look to them for guidance.²⁴

²²Muir v. Commissioner, T.C. Memo. 2017-224, at *9-*10, aff'd, 753 F. App'x 329 (5th Cir. 2019).

²³Rev. Proc. 2010-16, sec. 5.02(3).

²⁴Hollimon v. Commissioner, T.C. Memo. 2015-157, at *7-*8.

In fact, this Court frequently relies on Rev. Proc. 2010-16 when deciding last known address issues.²⁵

Mr. Marineau did not provide clear and concise notification of his address change before the Commissioner mailed his notice of deficiency to the Pensacola, Florida address. Therefore, Mr. Marineau's Florida address was his last known address at the time of mailing.

b. Mailing Irregularities

Mr. Marineau argues that the Commissioner improperly mailed the notice of deficiency, making it invalid. First, Mr. Marineau claims the notice of deficiency was sent "by another sender from another zip code". As evidence, he compares the different zip codes which appear on the notice of deficiency and the USPS tracking print out. The different zip codes, argues Mr. Marineau, prove "another sender" mailed the notice. This argument does not warrant much discussion. An IRS office does not need to share a zip code with a USPS mailing center to ensure a mailing is valid; indeed, IRS processing centers often have their own zip codes.

Second, Mr. Marineau argues that the Commissioner improperly sent the notice because USPS delivered the notice to Roseville, Michigan. In the case of a mailing irregularity, the Commissioner may rely on a presumption of official regularity.²⁶ This Court has held that compliance with Postal Service Form 3877 raises a presumption of official regularity and proper mailing of a notice of deficiency.²⁷ A Form 3877 "represents direct documentary evidence of the date and the fact of mailing."²⁸

The Commissioner established official regularity in mailing the notice of deficiency to Mr. Marineau. The Commissioner's administrative record contained Form 3877. The Form shows a tracking number, which matches the number on the

²⁵See e.g., Gregory v. Commissioner, 152 T.C. ___, ___ (slip op. at 6, 8, 9, 10, 12) (Mar. 13, 2019), appeal filed (3d Cir. May 28, 2019); Bongam v. Commissioner, 146 T.C. 52, 54 (2016); Snodgrass v. Commissioner, at *11; Chapman v. Commissioner, T.C. Memo. 2019-110, at *15-*17; Muir v. Commissioner, at *10.

²⁶Hoyle v. Commissioner, 131 T.C. at 203.

²⁷Hoyle v. Commissioner, 131 T.C. at 203; Garrett v. Commissioner, T.C. Memo. 2015-228, at *5.

²⁸Coleman v. Commissioner, 94 T.C. 82, 90 (1990).

notice of deficiency, and Mr. Marineau's Pensacola, Florida address. The Form 3877 thus shows that the Commissioner mailed the notice of deficiency to Mr. Marineau's last known address.

The Commissioner met his mailing requirements by sending the notice of deficiency to Mr. Marineau's last known address before it was rerouted by USPS. As previously stated, a taxpayer's actual receipt of a notice of deficiency is immaterial; instead we look to what the Commissioner knew at the time of mailing. Here, the Commissioner understood Mr. Marineau's address to be in Jacksonville, Florida and so mailed the notice to Jacksonville. When the notice was rerouted by USPS, the Commissioner had already fulfilled his obligations in dispatching the notice to the correct location. Because he met this requirement, the rerouting of the notice of deficiency to Roseville, Michigan, by USPS is irrelevant.

Conclusion

No genuine dispute of material fact exists in this collection action. Because Mr. Marineau did not properly raise his underlying liability during the collection proceeding, this Court reviews this collection action for abuse of discretion. The Commissioner did not abuse his discretion when he concluded that all applicable law and administrative procedure had been met. Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment filed August 16, 2018, is granted. It is further

ORDERED that Mr. Marineau's motion for summary judgment filed September 27, 2018, is denied. It is further

ORDERED AND DECIDED that the determination set forth in the Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 issued to petitioner on March 17, 2016, and supplemented on June 15, 2018, for petitioner's income taxes for the taxable period ending December 31, 2012, and upon which this case is based, is sustained.

**(Signed) Ronald L. Buch
Judge**

Entered: **DEC 11 2019**