

UNITED STATES TAX COURT
WASHINGTON, DC 20217

RONNIE THEODIS DEMMONS,)
)
Petitioner,) CT
)
v.) Docket No. 18387-18L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER AND DECISION

The Petition in this case was filed in response to a notice of determination issued by the Internal Revenue Service Office of Appeals (Appeals) sustaining a proposed levy to collect an unpaid Federal income tax liability for petitioner’s 2010 taxable year. The Petition, as well as the request for a collection due process (CDP) hearing that petitioner filed with Appeals, advanced only frivolous arguments.

On December 2, 2019, respondent filed a Motion for Summary Judgment and a Declaration of Tammie A. Geier in support thereof (collectively, the Motion). By Order dated December 13, 2019, the Court directed petitioner to file a response to the Motion by January 10, 2020. In that Order, we warned petitioner that, pursuant to section 6673,¹ continuing to maintain frivolous positions in this case could result in the imposition of a penalty against him of up to \$25,000. On January 13, 2020, petitioner filed a response to the Motion in which he advanced argument that we had previously identified as frivolous. For the reasons that follow, we will grant respondent’s Motion and impose on petitioner a penalty pursuant to section 6673 of \$500.

Summary judgment “is intended to expedite litigation and avoid unnecessary and expensive trials.” Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988).

¹All section references are to the Internal Revenue Code of 1986, as amended and in effect for the year at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Summary judgment may be granted where there is no genuine issue of material fact and a decision may be rendered as a matter of law. Rule 121(a), (b). The moving party bears the burden of proving that there is no genuine issue of material fact, and factual inferences are viewed in a light most favorable to the nonmoving party. Craig v. Commissioner, 119 T.C. 252, 260 (2002); Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985). The party opposing summary judgment must set forth specific facts showing that a genuine question of material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988).

Petitioner has not raised a dispute as to any facts set forth in respondent's Motion, which respondent has substantiated with relevant documents from the administrative file. Accordingly, summary adjudication is appropriate, and we need only decide whether respondent is entitled to judgment as a matter of law.

The Secretary of the Treasury has the power to levy upon property and property rights of a taxpayer who fails to pay a tax within 10 days after notice and demand for payment thereof. Sec. 6331(a). Section 6330 provides, however, that no levy may be made unless the Secretary first notifies the taxpayer of the right to a CDP hearing before Appeals. Sec. 6330(a), (b). At the hearing, the taxpayer may raise any relevant issue relating to the unpaid tax or the proposed levy, including challenges to the appropriateness of collection actions and offers of collection alternatives. Sec. 6330(c)(2)(A); Sego v. Commissioner, 114 T.C. 604, 608-609 (2000); Goza v. Commissioner, 114 T.C. 176, 180 (2000). During the hearing, a taxpayer may contest the existence or amount of the underlying tax liability if he did not receive a statutory notice of deficiency for the liability or did not otherwise have an earlier opportunity to dispute it. Sec. 6330(c)(2)(B); see also Sego v. Commissioner, 114 T.C. at 609. If the validity of the underlying tax liability is properly at issue, we review it de novo. Goza v. Commissioner, 114 T.C. at 181-182. Otherwise, we review Appeals' determination for abuse of discretion. Sego v. Commissioner, 114 T.C. at 610; Goza v. Commissioner, 114 T.C. at 182.

Following the hearing, Appeals must make a determination whether the Commissioner may proceed with the proposed collection action, taking into consideration (1) whether the requirements of applicable law and administrative procedure have been met, (2) any relevant issues raised by the taxpayer, and (3) whether the proposed collection action appropriately balances the need for efficient collection of taxes with the taxpayer's legitimate concern that the collection action be no more intrusive than necessary. Sec. 6330(c)(3). We have

jurisdiction to review Appeals' determination where the taxpayer timely petitions for it. Sec. 6330(d)(1).

Respondent mailed a notice of deficiency to petitioner for his 2010 taxable year on February 18, 2014. Under section 6213(a), petitioner had 90 days from the date of that notice to file a petition with this Court for a redetermination of the amount of his 2010 tax liability, but he failed to do so. Accordingly, when petitioner filed his CDP hearing request with Appeals in 2018, he was precluded from challenging the underlying tax liability before Appeals or before this Court. See sec. 6330(c)(2)(B); Goza v. Commissioner, 114 T.C. at 182-183. The only issue petitioner raised in his CDP hearing request was a precluded, and frivolous, challenge to the underlying liability based on the Fair Debt Collection Practices Act, Pub. L. No. 95-109, 91 Stat. 874 (1977). He did not respond to Appeals' invitation to provide additional information, nor did he participate in the telephone conference that Appeals scheduled for the purpose of discussing his case. Our review of the administrative record has uncovered no abuse of discretion in Appeals' determination to uphold the proposed levy. We therefore conclude that respondent is entitled to judgment as a matter of law, and we will enter a decision in his favor.

In the Petition he filed in this case, petitioner disputed Appeals' determination on the ground that it violated "positive law", citing generally the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, as well as section 6065. Despite having been warned of the possibility of a section 6673 penalty, petitioner again raised section 6065 (and no other arguments) in his response to respondent's Motion, claiming that the Motion should fail because respondent has not presented petitioner with any "claims" satisfying the requirements of section 6065. It is settled law that while section 6065 requires taxpayers to sign returns and certain other documents filed with respondent under penalty of perjury, it does not require respondent to do the same with respect to documents, such as notices of deficiency, issued to taxpayers. See Stone v. Commissioner, T.C. Memo. 1998-314, 1998 WL 547043, at *4; Scruggs v. Commissioner, T.C. Memo. 1995-355, 1995 WL 451050, at *4; Spencer v. Commissioner, T.C. Memo. 1977-145, 1977 WL 3441.

Section 6673(a)(1) authorizes the Tax Court to impose a penalty not exceeding \$25,000 whenever it appears that proceedings before it have been instituted or maintained by the taxpayer primarily for delay, or the taxpayer's position in such proceeding is frivolous or groundless. We have noted that, "[g]iven the public policy interest in deterring the abuse and waste of judicial resources, the authority of the Court to impose this penalty and in what amount is

broad.” Smith v. Commissioner, T.C. Memo. 2019-111, at *13 (citing Leyshon v. Commissioner, T.C. Memo. 2015-104, at *24, aff’d, 649 F. App’x 299 (4th Cir. 2016)). A position is frivolous if it is “contrary to established law and unsupported by a reasoned, colorable argument for change in the law.” Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986); 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). Given petitioner’s lack of participation in the CDP hearing and his repeated assertion of unreasoned and frivolous positions in this case, it appears that petitioner’s purpose in maintaining this proceeding is primarily to delay collection of the tax he owes. We therefore conclude that it is appropriate to impose on petitioner a section 6673 penalty of \$500.

In view of the foregoing, it is

ORDERED that respondent’s Motion for Summary Judgment, filed December 2, 2019, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action for petitioner’s 2010 taxable year as determined in the notice of determination dated August 17, 2018, upon which this case is based. It is further

ORDERED AND DECIDED that petitioner shall pay to the United States a penalty under section 6673(a)(1) of \$500.

(Signed) Joseph H. Gale
Judge

ENTERED: **FEB 14 2020**