

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WALTER J. ANTONYSHYN & GEORGIANA)	
L. ANTONYSHYN,)	
)	
Petitioners)	
)	
v.)	Docket No. 21526-14 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

We grant the September 16, 2015 motion for summary judgment filed by respondent (hereinafter the “IRS”).

Facts and Procedural History

On March 3, 2009, the IRS issued a notice of deficiency to the Antonyshyns for their 2005, 2006 and 2007 tax years. [Heller aff. Ex. 2 at 20] The notice of deficiency entitled the Antonyshyns to file a petition with the Tax Court seeking redetermination of the deficiencies. I.R.C. § 6213(a). The petition had to be filed within 90 days of the date of the notice of deficiency. *Id.* Thus, it had to be filed on or before June 1, 2009. [Heller aff. Ex. 2 at 22 (¶ 3)]

On July 9, 2009, the Antonyshyns mailed to the Tax Court a petition to redetermine the deficiencies with respect to the 2005, 2006, and 2007 tax years. [Heller aff. Ex. 2 at 22]

The Court dismissed the deficiency case for 2005, 2006, and 2007, on the grounds that the Antonyshyns’ petition was filed after the 90-day deadline. [Heller aff. Ex. 2 at 28]

In 2013, the Antonyshyns entered into a settlement agreement with the IRS Appeals Office for the 2005, 2006, and 2007 tax years. [Ribauda aff. Ex. 4, pp. 22-25] Under the settlement, the Antonyshyns conceded they were liable for the

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deficiencies. [Ribaudo aff. Ex. 4, pp. 22-23] The IRS conceded the accuracy related penalties. [Ribaudo aff. Ex. 4 at 22]

On January 28, 2014, the IRS issued a notice of federal tax lien filing to the the Antonyshyns. [Ribaudo aff. ¶ 9] The notice informed the Antonyshyns that the IRS had filed a notice of federal tax lien to collect their tax liabilities for tax years 2006 and 2007 and that they had a right to request a collection-review hearing. [Ribaudo aff. Ex. 3 at 15-17]

On March 6, 2014, the Antonyshyns requested a collection-review hearing. [Ribaudo aff. Ex. 4]

On August 7, 2014, the Appeals Office issued a notice of determination. [Ribaudo aff. ¶ 7] Among other things, the notice stated that the Appeals Office had made adjustments to the amounts of assessments for tax years 2006 and 2007 to properly account for the 2013 settlement. [Ribaudo aff. Ex. 1 at 5]

On January 26, 2015, the Tax Court held a trial in a deficiency case involving the Antonyshyns' 2009 and 2010 years. [No. 28648-13 No. 11] Other than penalties, the sole issue in the deficiency case is whether Georgiana Antonyshyn (hereinafter "Georgiana") is a real estate professional under section 469(c) of the Internal Revenue Code of 1986, as amended. [Heller aff. ¶ 5] (All subsequent references to sections are to the Internal Revenue of 1986, as amended.).

As indicated above, on September 16, 2015, the IRS moved for summary judgment in this collection-review case involving tax years 2006 and 2007. In the motion, the IRS contends that the underlying tax liabilities for 2006 and 2007 cannot be considered by the Court because the Antonyshyns had two prior opportunities to dispute the liabilities. [R MSJ at 14] The first opportunity, according to the IRS, was in 2009, when the IRS issued the notice of deficiency for the 2005, 2006, and 2007 tax years. [R MSJ at 14] The second opportunity, according to the IRS, consisted of negotiations between the Antonyshyns and the Appeals Office that led to the 2013 settlement agreement. [R MSJ at 14]

In their opposition to the motion for summary judgment, the Antononshyns acknowledge that they received the notice of deficiency. [P2] Furthermore, they do not dispute that they had an opportunity to dispute their 2006 and 2007 liabilities during the negotiations with the Appeals Office that led to the 2013 settlement agreement. Their sole contention is as follows:

Petitioners contend that if they are successful in establishing that Petitioner - wife actively participated in the rental activities for taxable years 2009 and 2010, then the computation of tax liability for years 2006 and 2007 must be computed with the adjustments authorized under §481 which would reduce the liability to \$0.

[P2]

Discussion

When the IRS files a notice of federal tax lien, it must notify the taxpayer of the right to a collection-review hearing with its Appeals Office by sending the notice by certified or registered mail to such person's last known address not more than 5 days after the filing of the notice of federal tax lien. Sec. 6320(a)(1), (2)(C). At the collection-review hearing, the taxpayer may raise various issues that must be considered by the Appeals Office in its determination. Sec. 6330(c)(2), (3). However, section 6330(c)(2)(B) provides that a taxpayer can raise a challenge to the amount of the underlying tax liability only if the taxpayer did not receive a notice of deficiency or have some other prior opportunity to challenge the liability. Here, the Antonyshyns received a notice of deficiency regarding 2006 and 2007. Therefore, section 6330(c)(2)(B) bars them from challenging the amount of their 2006 and 2007 liability before the Appeals Office. A taxpayer who is barred from challenging the amount of the underlying tax liability before the Appeals Office is also barred from making such a challenge when the Tax Court reviews the Appeals Office's determination. Sego v. Commissioner, 114 T.C. 604, 610 (2000).

The Antonyshyns' theory that Georgiana is a real estate professional in 2009 and 2010 is on its face a challenge to the amount of their tax liabilities by 2006 and 2007 because, in their words, the theory "would reduce the liability to \$0." The Antonyshyns' theory is barred by section 6330(c)(2)(B). Even if section 481 could override section 6330(c)(2)(B) in this respect, we fail to see how the resolution of the deficiency case for 2009 and 2010 would trigger a section-481 adjustment with regard to 2006 and 2007. Section 481(a) requires an adjustment to the taxpayer's taxable income for a taxable year if the taxable income in that taxable year is computed under a method of accounting different from that employed in the prior year. The Anthonyshyns seem to be contending that it would be a change in the method of accounting if Georgiana were treated as a real estate professional in 2009 and 2010. Even if contention is true, the resulting section-481(a) adjustment should be made in the year of the change (2009), not in the prior years (2006 and 2007). Furthermore, treating Georgiana as a real estate professional is not a change in a method of accounting. A change in the underlying facts is not a

change in the method of accounting. See Treas. Reg. § 1.446-1(e)(2)(ii)(b) (“A change in the method of accounting also does not include a change in treatment resulting from a change in underlying facts.”). The question of whether Georgiana is a real-estate professional is a factual issue that is determined on a year-by-year basis. If she is a real-estate professional for 2009 and 2010, that would not affect the question of whether she is a real-estate professional for 2006 and 2007. [R Reply at 4]

The Antonyshyns seek an adjustment to their income tax liabilities for 2006 and 2007. This adjustment is an impermissible challenge to their underlying tax liability. Because the Antonyshyns complain of no other potential error in the notice of determination, the notice of determination should be sustained.

Given the foregoing, it is

ORDERED that respondent’s September 16, 2015 motion for summary judgment is granted; and it is

ORDERED and DECIDED that the determination set forth in the Notice of Determination Concerning Collection Action(s) Under 6320 and/or 6330, issued to petitioners on August 7, 2014, for petitioners’ income tax liabilities for the taxable years 2006 and 2007, upon which this case is based, is sustained in full.

**(Signed) Richard T. Morrison
Judge**

ENTERED: **APR 06 2016**