

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

GARY A. BELL, SR.,)
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Petitioner,)
)
v.) Docket No. 10625-17 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
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Respondent)
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)

ORDER AND ORDER OF DISMISSAL FOR LACK OF JURISDICTION

Pending in this case is respondent’s Motion To Dismiss For Lack Of Jurisdiction, filed June 28, 2017, and supplemented September 15, 2017. In his motion respondent also moves for the imposition of a penalty under section 6673.¹ Petitioner filed an Objection to respondent’s motion on August 7, 2017, and after respondent supplemented his motion petitioner filed a second Objection on March 19, 2018. Most recently, by Order dated June 4, 2018, respondent’s motion, as supplemented, was assigned to the undersigned for disposition.

Petitioner resided in the State of Missouri at the time that the petition was filed with the Court.

Respondent’s Motion Regarding Jurisdiction

The petition in this case was filed on May 15, 2017. The petition represents nothing other than a protest against the internal revenue laws of this country. Notably, no notice of determination, see section 6330(c)(3) and (d)(1), was attached as an exhibit to the petition, nor was any notice of deficiency, see sections 6212 and 6213(a), nor was any other jurisdictionally-relevant IRS notice. Rather,

¹ All section references are to the Internal Revenue Code, as amended. All Rule references are to the Tax Court Rules of Practice and Procedure.

the only documents attached as exhibits to the petition were copies of the following:

(1) a Final Notice/Notice Of Intent To Levy And Notice Of Your Right To A Hearing (hereinafter, Final Notice), dated October 15, 2012, listing income tax liabilities for the taxable (calendar) years 1998, 1999, 2000, 2002, 2003, 2004, and 2005; see sec. 6330(a);

(2) annual reminders of overdue taxes for 2003, 2004, 2005, and 2012, dated October 17, 2016; see sec. 7524; and

(3) blank Forms 1040, U.S. Individual Income Tax Return, for 2003, 2004, 2005, and 2012.

Petitioner's account balance for each of the taxable years 1998, 1999, 2000, is zero, as his previously-existing liabilities for those years were written off by respondent on July 8, 2013, because of the expiration of the period of limitations on collection. See sec. 6502(a). Petitioner's account balance for 2002 is also zero, as his previously-existing liability for that year was written off by respondent on April 27, 2015, because of the expiration of the period of limitations on collection. Id.

Notices of deficiency for 2003, 2004, and 2005 were issued by respondent in December 2009, and petitioner commenced an action for redetermination in this Court in April 2010 at docket No. 7777-10. By Order and Decision entered December 7, 2010, the Court granted respondent's motion for summary judgment and generally sustained respondent's determinations for the three years in issue. Petitioner did not appeal, and the Court's Order And Decision became final in due course. See secs. 7481(a)(1), 7483. Petitioner's liabilities for 2003, 2004, and 2005 were subsequently listed on the aforementioned Final Notice dated October 15, 2012, and were apparently also listed on a notice of Federal tax lien filed in November 2012. However, account transcripts for 2003, 2004, and 2005 do not reflect receipt by respondent of any request for an administrative hearing in respect of either the Final Notice or notice of Federal tax lien, see secs. 6330(b), 6320(b); accordingly, no notice of determination was ever issued in respect of petitioner's outstanding liabilities for those three years.

Petitioner filed an income tax return for 2012, reporting taxable income of \$305,546, tax of \$92,329, and a withholding credit of \$62,818. The balance due, plus accruals of interest and penalty, went unpaid by petitioner. In July 2014 a

final notice of intent to levy was issued and a notice of Federal tax lien was filed. However, the account transcript for 2012 does not reflect receipt by respondent of a request for an administrative hearing. Id. Accordingly, no notice of determination was ever issued for that year (nor, for that matter, was any notice of deficiency ever issued).

The Tax Court is a court of limited jurisdiction. See sec. 7442. Accordingly, the Court may exercise jurisdiction only to the extent expressly authorized by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In addition, jurisdiction must be proven affirmatively, and a party invoking the Court's jurisdiction bears the burden of proving that the Court has jurisdiction over the party's case. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960); National Comm. to Secure Justice, Etc. v. Commissioner, 27 T.C. 837, 839 (1957). In order to meet this burden, the party must establish affirmatively all facts giving rise to the Court's jurisdiction. See Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. at 180; Consolidated Co. v. Commissioner, 15 B.T.A. 645, 651 (1929).

In a collection review action, this Court's jurisdiction under sections 6320 and 6330 depends, in part, on the issuance of a notice of determination by respondent's Office of Appeals after the taxpayer has requested an administrative hearing following the issuance by respondent's collection division of either a final notice of intent to levy, see sec. 6330(a), or a notice of filing of Federal tax lien, see sec. 6320(a). See Sarrell v. Commissioner, 117 T.C. 122, 125 (2001); Moorhous v. Commissioner, 116 T.C. 263, 269 (2001); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); see also Rule 330(b).

In an action for the redetermination of a deficiency, the Court's jurisdiction under section 6213(a) depends on the issuance by the Commissioner of a notice of deficiency to the taxpayer and the timely filing of a petition by the taxpayer. Frieling v. Commissioner, 81 T.C. 42, 46 (1983); Rule 13(a). The notice of deficiency has been described as the "taxpayer's ticket to the Tax Court" because without it, there can be no prepayment judicial review by the Court of the deficiency determined by the Commissioner. Mulvania v. Commissioner, 81 T.C. 65, 67 (1983).

In the present case, and for those years for which there is an outstanding liability, there is nothing in the record to demonstrate that respondent has issued any jurisdictionally-relevant notice that would support jurisdiction. Specifically,

there is nothing in the record to demonstrate that respondent has issued any notice of determination; and there is nothing in the record to demonstrate that respondent has issued any notice of deficiency that has not already been appealed to, and addressed by, this Court in a final decision.² Accordingly, the Court will grant that part of respondent's motion that moves to dismiss this case for lack of jurisdiction.

Respondent's Motion Regarding Penalty Under Section 6673

As relevant, section 6673(a)(1) provides that this Court may require a taxpayer to pay a penalty not in excess of \$25,000 whenever it appears that the proceedings were instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position is frivolous or groundless.

A taxpayer's position is frivolous if it is "contrary to established law and unsupported by a reasoned, colorable argument for change in the law." Williams v. Commissioner, 114 T.C. 136, 144 (2000) (quoting Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986)). The purpose of section 6673 is to compel taxpayers to think and to conform their conduct to settled tax principles; it is designed to deter frivolity and waste of judicial resources. See Coleman v. Commissioner, 791 F.2d 68; Grasselli v. Commissioner, T.C. Memo. 1994-581.

Petitioner's filings in this case, which are replete with long-discredited tax protestor statements and meaningless pseudo-legal verbiage, represent nothing other than a protest against the internal revenue laws of this country. Thus, for example, petitioner alleges in the petition that "The Secretary of Treasury has never promulgated in the Federal Register the Implementing-Regulations that impose obligations upon the general public of the 50 states of the Union and is a mandatory requirement for all Federal Agencies via the Federal Register Act." Further by way of example, in his August 7, 2017 Objection petitioner alleges that "These codes IRC sec 6212, 6213(a), 7481 are contrary to the Rule of Law and Federal Law, and are PRIMA FACIE evidence of law, these codes are used to manipulate authority they do not have." Petitioner then goes on to allege in such Objection:

² To the extent that petitioner wishes to revisit respondent's deficiency determinations for 2003, 2004, and 2005, it is clear that he may not do so. See Commissioner v. Sunnen, 333 U.S. 591, 597-598 (1948) (doctrine of res judicata applicable to Federal income tax cases); Koprowski v. Commissioner, 138 T.C. 54, 59-60 (2012) (Court reviewed).

At law, labor is property. The Supreme Court has identified labor as man's most precious property. Therefore, the exchange of one's labor for wages or salary is considered by law to be an exchange of properties of equal value in which there is NO gain or profit. Such a property exchange of equal value cannot be taxed because there is no profit or gain. Also, one who works in an ordinary occupation is not a recipient of any privilege granted by government, because he is merely exercising his constitutionally guaranteed right to work and earn a living. Courts have repeatedly ruled that no tax may be placed upon the exercise of rights.

And finally by way of example, in his March 19, 2018 Objection petitioner alleges that "The Rule of Law, (Article 1, Sec. 9, Clause 4) and Federal Law, The Federal Registry Act and the Paperwork Reduction Acts 1980 and 1995, clearly state that people born in the 50 states have no legal obligation to file a Federal Tax, a direct tax."

Petitioner is no stranger to this Court, having filed multiple prior actions, all to no avail. Respondent in his June 28, 2017 motion catalogs those actions, their outcomes, and their similarities to the present action.³ In sum, petitioner has been warned on numerous occasions, and he has also been the recipient of a penalty in one instance. Given petitioner's failure to take those warnings and the prior imposition of a penalty to heart, and his persistence in uttering tax protestor rhetoric in the present case, the time has come to impose an even-greater penalty on him under section 6673(a)(1). The decision to do so is supported by the fact that the Court is convinced that petitioner instituted and maintained this proceeding primarily, if not exclusively, for purposes of delay. Having to deal with this matter wasted the Court's time, as well as respondent's, and taxpayers with genuine controversies may have delayed.

³ One update is required. Petitioner's case at dkt. No. 27787-16 was pending at the time that respondent filed his motion in the present case on June 28, 2017. However, on July 31, 2017, the Court entered an Order And Order Of Dismissal For Lack Of Jurisdiction granting respondent's jurisdictional motion and imposing on petitioner a penalty under section 6673(a) of \$5,000. Petitioner did not appeal to the Court of Appeals. Although the Court's dispositive order at dkt. No. 27787-16 occurred after petitioner commenced the present case, petitioner filed both of his Objections in the present case after entry of that dispositive order. Petitioner was therefore on notice regarding his frivolous positions, but he nevertheless persisted by advancing them once again in the present case.

In view of the foregoing, it is hereby

ORDERED that so much of respondent's Motion To Dismiss For Lack Of Jurisdiction, filed June 28, 2017, as supplemented, that moves to dismiss this case for lack of jurisdiction is granted, and this case is dismissed on the stated ground for want of a jurisdictionally-relevant IRS notice. It is further

ORDERED that so much of respondent's Motion To Dismiss For Lack Of Jurisdiction, filed June 28, 2017, as supplemented, that moves to impose a penalty on petitioner under section 6673(a) is granted. It is further

ORDERED that petitioner is liable for a penalty under section 6673(a) in the amount of \$10,000.

(Signed) Robert N. Armen
Special Trial Judge

Entered: **JUN 08 2018**