

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SOCCER GARAGE, INC.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 6946-19SL
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER

This section 6330(d)¹ case, commenced in response to a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated March 28, 2019 (notice), is before the Court on respondent’s motion for summary judgment, filed January 29, 2020. According to the notice, and now respondent’s motion, a levy is an appropriate collection action with respect to section 6721(e) penalties assessed against petitioner for 2010 and 2011 (underlying liabilities).

Allegations contained in the petition show that petitioner is challenging the existence or the amount of the underlying liabilities, and respondent does not dispute petitioner’s entitlement to do so. See sec. 6330(c)(2)(B). That being so, the Court reviews, de novo, the determination made in the notice, Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000), and our review takes into account that respondent bears the burden of production with respect to the imposition of the section 6721(e) penalties here in dispute. See sec. 7491(c).

The procedural history of the assessment process resulting in the underlying liabilities is summarized in respondent’s motion and the materials submitted in support of it. We need only recite a part of that process. In a letter dated June 15,

¹Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov.

2012, respondent claimed that petitioner failed to file certain information returns and requested that those returns be submitted. Petitioner's response, or as respondent claims, its failure to respond to the letter prompted respondent to assess the underlying liabilities.

Respondent's motion proceeds as though petitioner not only failed to satisfy a filing obligation, but intentionally disregarded that obligation. According to respondent's motion, supervisory approval did not precede the assessment of the penalties. According to respondent, "the section 6721 penalty is one automatically calculated through electronic means and may be assessed without written supervisory approval". See sec. 6751(b)(2).

Section 6721(a) imposes a penalty of \$250 for each failure to file an information return with respondent on or before the required filing date. Sec. 6721(a)(2)(A). If the employer intentionally disregards the filing requirement set forth in section 6721(a)(2), then section 6721(e) increases the penalty with respect to each failure that would otherwise be calculated under section 6721(a) to \$500, or, if greater, 10% of the aggregate amount of the items required to be reported correctly. Sec. 6721(e). As relevant, a failure to file correct information returns under code section 6721(e) is due to "intentional disregard if it is a knowing or willful * * * failure to file timely". Sec. 301.6721-1(f)(2), *Proced. & Admin. Regs.* Whether a person knowingly or willfully fails to file timely "is determined on the basis of all the facts and circumstances in the particular case." Id. In this case, we are called upon to resolve the parties' dispute over the assessment of section 6721(e) penalties.

Disposition of a matter by summary judgment is appropriate if there is no genuine dispute as to any material fact, and a decision may be rendered as a matter of law. See Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The moving party bears the burden of proving that there is no genuine issue of material fact. See Dahlstron v. Commissioner, 85 T.C. 812, 821 (1985). The Court views any factual material and inferences in the light most favorable to the nonmoving party. Id.

The underlying liabilities were calculated and assessed pursuant to section 6721(e) because, according to respondent, petitioner intentionally disregarded its obligation to file certain information returns. It would seem that somewhere in the process of the assessment of a section 6721(e) penalty a human being is required to consider "all of the facts and circumstances" alluded to in the regulation in order to

determine whether a taxpayer's "disregard" was "intentional". According to respondent, that didn't happen in this case. If, as respondent's motion suggests, human input is not required because intentional disregard can be established by inference, then respondent is not entitled to a finding that petitioner intentionally disregarded its filing obligations at this stage of the proceedings. See, e.g. Naftel v. Commissioner, 85 T.C. 527, 529 (1985) (for purposes of summary judgment, all inferences are resolved against the moving party).

Furthermore, without a properly established factual basis showing that petitioner intentionally disregarded a filing obligation, it would be inappropriate to address and resolve by summary adjudication whether a section 6721(e) penalty imposed on that ground is "automatically calculated through electronic means" within the meaning of section 6751(b)(2)(B) and therefore exempt from the written supervisory approval requirement of section 6751(b)(1). See, e.g. Walquist v. Commissioner, 152 T.C. 61 (2019). Without a favorable finding on both points, respondent's motion must be rejected. It follows, and is

ORDERED that respondent's motion is denied.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
May 13, 2020