

UNITED STATES TAX COURT
WASHINGTON, DC 20217

BRIAN DEAN SWANSON,)
)
 Petitioner,)
)
 v.) Docket No. 15964-19 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

ORDER

Petitioner invoked the Court’s jurisdiction pursuant to section 6330(d) seeking review of a notice of determination issued by the IRS Independent Office of Appeals (Appeals Office) sustaining a proposed levy action to collect (1) an unpaid frivolous submission penalty assessed against him under section 6702 for the taxable year 2014 (section 6702 penalty) and (2) unpaid Federal income tax due for the taxable year 2015.¹

The matter is presently before the Court on petitioner’s motion for summary judgment, filed pursuant to Rule 121, and respondent’s motion to dismiss on grounds of mootness. Petitioner asserts that the section 6702 penalty was not properly assessed and is invalid because the IRS failed to comply with the procedural requirements of section 6751(b). Respondent contends that so much of this case as concerns the section 6702 penalty is moot because the penalty has been fully satisfied by means of the offset of an overpayment from another taxable year under section 6402(a). Petitioner argues that the overpayment in question should have been applied to offset income tax due for 2015--assuming as he does that the section 6702 penalty was not properly assessed.

¹Section references are to the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

As discussed in detail below, we will grant respondent's motion to dismiss on grounds of mootness and deny petitioner's motion for summary judgment.

Background²

In September 2016 petitioner and his wife filed a Form 1040X, Amended U.S. Individual Income Tax Return, for the taxable year 2014. In January 2017, the IRS sent a letter to petitioner and his wife informing them that the above-referenced Form 1040X had been treated as a frivolous submission, directing that they submit a corrected return within 30 days, and warning that failure to do so would result in the assessment of a section 6702 penalty. In February 2017, the IRS assessed a section 6702(a) penalty of \$5,000 against petitioner.

In September 2018, the IRS issued a notice of intent to levy to petitioner in respect of the unpaid section 6702 penalty as well as income tax that he had failed to pay for the taxable year 2015. Petitioner timely requested an administrative hearing with the Appeals Office. In August 2019, after conducting an administrative hearing through correspondence, the Appeals Office issued the notice of determination upon which this case is based.

In March 2020, respondent applied petitioner's income tax overpayment for the taxable year 2019 to fully offset the section 6702 penalty assessed for the taxable year 2014. Petitioner's account for 2014 now shows no balance due.

Discussion

Section 6330 provides procedures for administrative and judicial review of the Secretary's proposed levy actions. In rendering an administrative determination in a collection review proceeding under section 6330, the Appeals Office must verify that any applicable law or administrative procedure has been met in processing the case. Sec. 6330(c)(1), (3)(A). The Appeals Office also must consider any issues raised by the taxpayer relating to the collection action, including offers of collection alternatives, appropriate spousal defenses, and challenges to the appropriateness of the collection action. Sec. 6330(c)(2)(A), (3)(B). A taxpayer may challenge the existence or amount of his underlying tax liability if the taxpayer did not receive a notice of deficiency or did not otherwise

²The following facts are established by the record and are not in dispute.

have an opportunity to dispute such tax liability. Sec. 6330(c)(2)(B). Finally, the Appeals Office must consider whether the collection action balances the need for efficient collection against the taxpayer's concern that collection be no more intrusive than necessary. Sec. 6330(c)(3)(C). This Court has jurisdiction to review the administrative determination made by the Appeals Office. Sec. 6330(d)(1).

As a preliminary matter, overpayments by a taxpayer may be applied to other tax liabilities of the taxpayer at the discretion of the IRS. Sec. 6402(a), sec. 301.6402-3(a)(6)(i), *Proced. & Admin. Regs.*; see Morris v. Commissioner, T.C. Memo. 2012-217. As mentioned above, the IRS applied petitioner's overpayment for 2019 to fully offset the section 6702 penalty assessed for 2014. Given the IRS's broad discretion, petitioner's assertion that his 2019 overpayment should have been applied to his outstanding tax liability for 2015 is misplaced. See, e.g., Weber v. Commissioner, 138 T.C. 348, 361 (2012).

Although section 6330(d)(1) vests this Court with jurisdiction to review an Appeals Office determination, the Tax Court is a court of limited jurisdiction, sec. 7442, and we may exercise jurisdiction only to the extent expressly authorized by Congress, Naftel v. Commissioner, 85 T.C. 527, 529, (1985). In general, our jurisdiction under section 6330(d)(1) is limited to reviewing whether the Commissioner's proposed collection activity is appropriate. Greene-Thapedi v. Commissioner, 126 T.C. 1, 7 (2006). Ordinarily, once the Commissioner concedes that there is no unpaid liability for a disputed year upon which a collection action could be based, a proceeding filed in this Court pursuant to section 6330 is moot. *Id.*; Gerakios v. Commissioner, T.C. Memo. 2004-203; Chocallo v. Commissioner, T.C. Memo. 2004-152.

The dismissal of a case for mootness is premised upon the well-established principle that the exercise of Federal judicial power is limited to cases and controversies. Hefti v. Commissioner, 97 T.C. 180, 191 (1991) (mootness is a jurisdictional question since Article III, Section 2 of the Constitution limits the jurisdiction of the Federal judicial system to cases and controversies), *aff'd* 983 F.2d 868 (8th Cir. 1993); see Powell v. McCormack, 395 U.S. 486, 496 (1969) ("a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome"). Although the Tax Court is an Article I rather than an Article III court, the Supreme Court has held that the Tax Court exercises Federal judicial power. Freytag v. Commissioner, 501 U.S. 868, 890-891 (1991). For present purposes, a case filed pursuant to section 6330 is moot if the Federal income tax liability that the Commissioner is attempting to collect has

been paid in full so that no collection action is appropriate. See Greene–Thapedi v. Commissioner, supra.

In Greene–Thapedi, the Commissioner offset the taxpayer’s 1999 overpayment against the taxpayer’s 1992 liability, resulting in full payment of the 1992 liability. Id. at 4. The taxpayer moved to amend her petition to include her claim that the Commissioner incorrectly offset the 1999 overpayment against the 1992 liability and that the Commissioner should refund the 1999 overpayment, but we denied the motion on the ground that we did not have jurisdiction to review the taxpayer’s refund claim. Id. We explained in relevant part as follows:

Petitioner’s claim for a refund arises, if at all, under section 6330(c)(2), as an outgrowth of her challenge to the existence and amount of her underlying 1992 tax liability. Pursuant to section 6330(c)(2), however, whatever right petitioner may have to challenge the existence and amount of her underlying tax liability in this proceeding arises only in connection with her challenge to the proposed collection action. Inasmuch as the proposed levy is moot, petitioner has no independent basis to challenge the existence or amount of her underlying tax liability in this proceeding.

Id. at 8; fn. ref. omitted.

Consistent with the Court’s holding in Greene-Thapedi v. Commissioner, as summarized above, it is clear that so much of this case as relates to the section 6702 penalty must be dismissed as moot. In short, as was the case in Greene-Thapedi v. Commissioner, petitioner’s underlying liability for 2014 (i.e., the section 6702 penalty) has been satisfied in full by way of an offset of petitioner’s 2019 overpayment. Under the circumstances, there is no balance due on petitioner’s account for the taxable year 2014 and no need for the proposed levy.

Because we will dismiss so much of this case as concerns the section 6702 penalty, it follows that petitioner’s motion for summary judgment will be denied.

Upon due consideration, it is

ORDERED that respondent's Motion to Dismiss on Grounds of Mootness, filed July 1, 2020, is granted in that so much of this case relating to taxable year 2014 is dismissed. It is further

ORDERED that petitioner's Motion for Summary Judgment, filed May 12, 2020, is denied.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

Dated: Washington, D.C.
July 29, 2020