

The outstanding liability that respondent seeks to collect is a deficiency in income tax for 2012 in the amount of \$4,226, plus statutory additions and interest. Such deficiency was determined in a notice of deficiency dated and mailed to petitioner November 10, 2014. Regarding receipt of the notice of deficiency, the Attachment to the February 5, 2016 Notice Of Determination includes the following passages:

The Hearing Officer held the telephone conference with your POA (Stephen Gilbert) and he stated he was disputing the liability and went on to explain why. The Hearing Officer interrupted and asked if you had received the Notice of Deficiency for tax year 2012. Your POA stated yes. The Hearing Officer advised him she was precluded from hearing the liability issue, because you had a prior opportunity to dispute the liability in tax court due to the Notice of deficiency being received. She was unable to agree upon an acceptable collection alternative, because your POA did not wish to discuss any collection alternative since he believes you do not owe the tax liability. The Hearing Officer advised your POA he may dispute the liability issue through the audit reconsideration department and she provided him with that information.

* * * * *

You challenged the existence or the amount of the liability. Your POA stated on your request for a Collection Due Process Hearing that you are disputing the liability. During the hearing, the Hearing Officer asked your POA if you received the Notice of Deficiency prior to the assessment. Your POA stated yes. The notice explained that if you disagreed with the tax liability you must petition the US Tax Court within 90 days from the date of the notice. [See sec. 6213(a), regarding the time within which a petition for redetermination of deficiency must ordinarily be filed with this Court.¹] There is no indication that you petitioned the tax court.

IRC 6630(c) (2) (B) states that a person may raise at the hearing, challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax

¹ In the text, and unless otherwise indicated, section references are to the Internal Revenue Code, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

liability. Since you have received a prior opportunity to challenge the liability, you may not dispute the liability in your CDP Hearing.

Discussion

As previously mentioned, this case is presently before the Court on respondent's Motion For Summary Judgment and two supporting declarations. Also as previously mentioned, petitioner has not filed a response to the motion although afforded an opportunity to do so.

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy. Rule 121(a). The Court may grant summary judgment only if there are no genuine disputes or issues of material fact. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Where the record viewed as a whole could not lead a reasonable trier of fact to find for the non-moving party, there is no "genuine issue for trial". Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The party moving for summary judgment bears the burden of proving that there is no genuine issue of material fact, and factual inferences will be read in the manner most favorable to the party opposing summary judgment. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985).

At all times petitioner has sought to challenge the existence or amount of his income tax liability for 2012. Petitioner has raised no other issue.

In the seminal case of Goza v. Commissioner, 114 T.C. 176, 182-183 (2000), the Court held that if a taxpayer was barred from challenging the existence or amount of the underlying tax liability before the Commissioner's Appeals Office, then the taxpayer would be barred from doing so in a subsequent collection review proceeding in this Court. There the Court focused on section 6330(c)(2)(B), concluding that because the taxpayer "was precluded from contesting his liability for the underlying taxes before the Appeals Office" based on that section, he was barred from doing so before this Court. Id.

As previously stated, pursuant to section 6330(c)(2)(B) a taxpayer may challenge the existence or amount of the taxpayer's underlying tax liability at a collection hearing before the Commissioner's Appeals Office if the taxpayer did not receive a notice of deficiency or did not otherwise have an opportunity to dispute such tax liability. See sec. 301.6330-1(e)(1), Proced. & Admin. Regs. In

the instant case, petitioner's representative admitted to respondent's hearing officer during the CDP hearing that petitioner received the notice of deficiency for 2012. Further, petitioner's representative has not sought to contradict himself or otherwise comment on the matter in a response to respondent's pending motion, as no such response has been filed. Under these circumstances, the Court concludes that petitioner received the notice of deficiency such that section 6330(c)(2)(B) bars petitioner from challenging the existence or amount of his underlying liability in the instant case. Whether petitioner may do so administratively by seeking audit reconsideration, as stated by the hearing officer in her statement quoted supra is a matter that we need not, and do not, address.

Conclusion

Consistent with the foregoing, the Court holds that (1) petitioner is not entitled to challenge the existence or amount of his income tax liability for 2012 in the instant case and (2) there was no abuse of discretion in the determination of respondent's Appeals Office in sustaining the proposed levy. In sum, drawing all factual inferences against respondent, there is no genuine issue or dispute as to any material fact, and respondent is entitled to judgment as a matter of law. Accordingly, it is hereby

ORDERED that respondent's Motion For Summary Judgment, filed June 21, 2016, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the proposed collection action (levy) in respect of petitioner's outstanding income tax liability for 2012, as determined in the Notice Of Determination dated February 5, 2016, upon which notice this case is based.

(Signed) Robert N. Armen
Special Trial Judge

Entered: **FEB 09 2017**