

UNITED STATES TAX COURT

WASHINGTON, DC 20217

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ALEXANDER H. HYATT,)
)
 Petitioner,) Docket No. 7221-07L
)
 v.)
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

ORDER AND DECISION

This matter is before the Court on respondent's Motion For Summary Judgment under Rule 121¹ filed March 26, 2008. This Court ordered petitioner to file a response or any objection to respondent's motion on or before April 18, 2008. As of today, petitioner has filed no response or objection. Because petitioner raises only arguments in his petition that this Court and other courts have found to be frivolous, we grant respondent's motion.

Background

Petitioner filed a Federal income tax return for 2002 reporting \$66,223.98 of wages, then attached Form 2555-EZ, Foreign Earn Income Exclusion, to his return claiming that all of his wages were exempt from taxation because he resided in the foreign country of "Brooklyn, New York State," and, therefore, he claimed he owned no tax for 2002.

Respondent sent petitioner a letter stating that the return for 2002 was not acceptable and was a frivolous return. The letter informed petitioner that he had 30 days in which to correct the return to avoid a \$500 frivolous return penalty under section 6702. Petitioner admits that he _____
(Signed) Diane L. Kroupa
Judge
return or otherwise respond to the letter. Accordingly respondent assessed the frivolous return penalty under section 6702. When petitioner failed to pay the assessed amount, respondent mailed petitioner a Final Notice-Notice of Intent to Levy and Notice of Your Right to a Hearing dated April 24, 2006

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

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regarding petitioner's failure to pay the section 6702 frivolous return penalty assessment.

Respondent issued a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC pertaining to the frivolous return penalty assessment for 2002. Petitioner timely submitted a request for a hearing regarding the lien action for the assessed frivolous return penalty. Petitioner disputes the Section 6702 frivolous return penalty assessment and makes several frivolous arguments.

Respondent conducted a hearing with petitioner. Petitioner raised no credible issues at his hearing. He solely challenged the underlying frivolous return assessment.

Respondent sustained the proposed lien and levy action in a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated February 21, 2007.

Petitioner filed a petition² with this Court to contest the validity of the section 6702 frivolous return penalty. Petitioner maintains that he is not liable for any taxes in 2002 because Brooklyn, New York is not located in the United States of America.

As indicated respondent filed a Motion for Summary Judgment.

Discussion

We now address whether to grant summary judgment.

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. See, e.g., FPL Group, Inc. v. Commissioner, 116 T.C. 73, 74 (2001). A motion for summary judgment will be granted if the pleadings, answers to interrogatories, depositions, admissions, and other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. See Rule 121(b); Elect. Arts, Inc. v. Commissioner, 118 T.C. 226, 238 (2002). The moving party has the burden of proving that no genuine issue of material fact exists and that it is entitled to judgment as a matter of

² Petitioner resided in Brooklyn, New York, at the time he filed the petition.

law. See, e.g., Rauenhorst v. Commissioner, 119 T.C. 157, 162 (2002). Based upon our examination of the entire record before us, we find that there is no merit to any of petitioner's assertions and therefore there is no genuine issue as to any material fact.

Petitioner argues that his income is not taxable because he is a "Sovereign Citizen." Petitioner's argument that he is not liable for Federal income taxes is frivolous. See secs. 1(a)(1), 61(a)(1), 7701(a)(1), (14); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981); Craig v. Commissioner, 119 T.C. 252, 263 (2002). Courts have consistently upheld the determination that wages fall within the section 61(a)(1) definition of compensation, and accordingly, constitute taxable income. See e.g., Ledford v. United States, 297 F.3d 1378 (Fed. Cir. 2002); United States v. Connor, 898 F.2d 942 (3d Cir. 1990); Connor v. Commissioner, 770 F.2d 17 (2d Cir. 1985).

We now address whether it is appropriate to impose an additional penalty against petitioner under section 6673, which authorizes the Tax Court to require a taxpayer to pay to the United States a penalty up to \$25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless. See Scruggs v. Commissioner, T.C. Memo. 1995-355, affd. without published opinion, 117 F.3d 1433 (11th Cir. 1997); Zyglis v. Commissioner, T.C. Memo. 1993-341, affd. without published opinion, 29 F.3d 620 (2d Cir. 1994); Fischer v. Commissioner, T.C. Memo. 1994-586; McDonald v. Commissioner, T.C. Memo. 1992-586; Schott v. Commissioner, T.C. Memo. 1991-457.

We note that the type of arguments petitioner raises have been deemed by this Court to be frivolous and/or sanctionable under section 6673. The Court is aware that petitioner has pursued the same frivolous argument in this case as he did for 2003 and 2004. Apparently, the assertion of the \$500 frivolous return penalty under section 6702 has not deterred petitioner from wasting the Court's and respondent's limited time and resources.

Petitioner deserves a penalty under section 6673(a)(1), and that penalty should be substantial, if it is to have the desired deterrent effect. Cf. Talmage v. Commissioner, T.C. Memo. 1996-114, affd. without published opinion 101 F.3d 695 (4th Cir. 1996). The purpose of section 6673 is to compel taxpayers to

think and to conform their conduct to settled tax principles. Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986); see also Grasselli v. Commissioner, T.C. Memo. 1994-581.

In this proceeding now before the Court, petitioner asserts nothing but frivolous and groundless arguments. It is apparent from the entire record that petitioner instituted or maintained this proceeding primarily, if not exclusively, as a protest against the Federal income tax system and his proceeding in this Court is merely a continuation of petitioner's refusal to acknowledge and satisfy his tax obligations. We are convinced that no purpose would be served in repeating all that has been said about his frivolous and misguided arguments.

We are also convinced that petitioner is aware of the warnings this Court has given to taxpayers who provide the type of arguments petitioner provided in this case yet petitioner persisted and wasted this Court's limited time and resources. We therefore shall require petitioner to pay a penalty pursuant to section 6673(a)(1). In addition, we take this opportunity to admonish petitioner that the Court will consider imposing a larger penalty if petitioner returns to the Court and advances similar arguments in the future.

Accordingly, upon due consideration and for cause, it is

ORDERED that this case is stricken for trial from the April 28, 2008, New York, New York (Westbury, New York) trial session of the Court. It is further

ORDERED that respondent's Motion for Summary Judgment, filed March 26, 2008, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action for the taxable year 2002, as determined in the Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated February 21, 2007, upon which this case is based. It is further

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ORDERED AND DECIDED that petitioner shall pay to the United States a penalty under section 6673 of \$5,000.

**(Signed) Diane L. Kroupa
Judge**

ENTERED: **APR 24 2008**