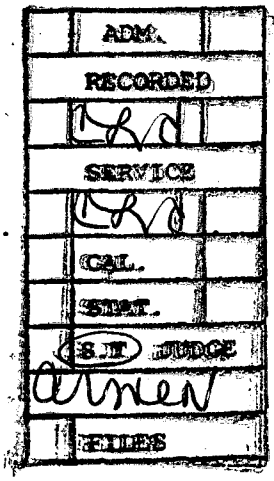
JR/CAV - Bench Op - Armen

UNITED STATES TAX COURT

WASHINGTON, DC 20217



ALEXANDER H. HYATT,)
)
Petitioner)
)
v.) Docket No. 8771-08L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

O R D E R

Pursuant to Rule 152(b) of the Tax Court Rules of Practice and Procedure, it is hereby

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the hearing of the above case before Special Trial Judge Robert N. Armen, Jr. at New York, New York, on May 12, 2009, containing his oral findings of fact and opinion rendered at the conclusion of the hearing.

In accordance with the oral findings of fact and opinion, an Order And Decision will be entered granting respondent's Motion For Summary Judgment filed May 29, 2008, and supplemented July 10, 2008, September 23, 2008, January 6, 2009, and March 11, 2009.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Dated: Washington, D.C.
June 22, 2009

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Bench Opinion by Special Trial Judge Robert N. Armen, Jr.

Hyatt v. Commissioner Docket No. 8771-08L

I.

THE COURT: The Court has decided to render oral findings of fact and opinion in this case, and the following represents the court's oral findings of fact and opinion. The oral findings of fact and opinion shall not be relied upon as precedent in any other case.

II.

This proceeding was heard as a regular case pursuant to the provisions of section 7443A(b)(4) of the Internal Revenue Code of 1986, as amended, and Rules 180, 181, and 182 of the Tax Court Rules of Practice and Procedure.

III.

This bench opinion is made pursuant to the authority granted by section 7459(b) of the Internal Revenue Code of 1986, as amended, and Rule 152 of the Tax Court Rules of Practice and Procedure. Hereinafter in this bench opinion, and unless otherwise indicated, all section numbers refer to the Internal Revenue Code, as amended, and all Rule numbers refer to the Tax Court Rules of Practice and Procedure.

IV.

Petitioner appeared on his own behalf. Michelle L. Maniscalco appeared on behalf of Respondent.

V.

This case is before the Court on Respondent's Motion For Summary Judgment, filed May 29, 2008, and supplemented July 10, 2008, September 23, 2008, January 6, 2009, and March 11, 2009. (Parenthetically, we note that Respondent's motion was originally titled "Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted And To Impose A Penalty Under I.R.C. § 6673". By Order dated June 6, 2008, the Court deemed Respondent's motion to be a Motion For Summary Judgment. There has never been any question that Respondent's motion, as recharacterized, includes the request that a penalty be imposed on Petitioner under section 6673.)

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

VI.

The facts relevant to the disposition of Respondent's motion are as follows:

At all times relevant to this case,

Petitioner has resided at 601 East 19th Street, Apt. 4L, Brooklyn, New York 11226. Petitioner consistently used this address in all of his dealings with the IRS, and the IRS sent all notices and other correspondence to Petitioner at this address.

Petitioner failed to file valid Federal income tax returns for 2001 and 2002. For example, for 2002, Petitioner submitted a Form 1040, U.S. Individual Income Tax Return, on which he reported wages on line 7 of $66,223.98 received as a bus operator from MTA-New York City Transit. However, on line 21 of his Form 1040, Petitioner subtracted $66,223.98, resulting in total income of zero, and concomitantly total tax of zero. In support of the subtraction, Petitioner attached Form 2555-EZ, Foreign Earned Income Exclusion, on which form Petitioner claimed that Brooklyn, New York was a foreign country.

Petitioner also attached to his Form 1040 a Form W-2, Wage and Tax Statement, issued by MTA-New York City Transit, which reported wages paid in 2002 of $66,223.98 and no income tax withheld.

Respondent did not process Petitioner's Forms 1040 because they were frivolous. Rather, by notice dated May 9, 2006, Respondent determined deficiencies in Petitioner's Federal income taxes, as

well as additions to tax under section 6651(a)(1) for failure to file and section 6651(a)(2) for failure to pay and accuracy-related penalties under section 6662(a) for 2001 and 2002. See sec. 6212. Petitioner did not file a petition for redetermination with this Court. See sec. 6213(a). Accordingly, on October 2, 2006, Respondent assessed the determined deficiencies, additions to tax, and penalties, together with statutory interest. See secs. 6213(c), 6601. (Parenthetically, we note that Respondent ultimately abated the penalties under section 6662(a) after the Court pointed out the limitation imposed by section 6664(b); also after inquiry by the Court, Respondent abated a frivolous return penalty that had mistakenly been made part of Petitioner's income tax account for 2002.)

Petitioner did not pay the amounts owing. Accordingly, in due course, Respondent sent Petitioner a final notice of intent to levy, see sec. 6330(a), and notice of filing of Federal tax lien, see sec. 6320(a).

Petitioner requested administrative review by filing with Respondent Form 12153, Request for a Collection Due Process Hearing. See secs. 6320(b), 6330(b). After a correspondence hearing, as opted for

by Petitioner, Respondent's Appeals Office issued a Notice of Determination on March 13, 2008, sustaining both the proposed levy and the filing of the tax lien. Petitioner then filed a petition with this Court. See sec. 6330(d)(1); see also sec. 6320(c).

VII.

Summary Judgment. In order to expedite litigation and avoid unnecessary and expensive trials, the Court may grant summary judgment when there is no genuine issue of material fact and a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), affd. 17 F.3d 965 (7th Cir. 1994). In deciding whether this standard is satisfied, we are guided by, inter alia, Rule 121(d), the final two sentences of which provide as follows:

"When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of such party's pleading, but such party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party."

See also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

Upon review of the record, and after hearing on Respondent's motion, as supplemented, we conclude that there are no genuine issues of material fact and that Respondent is entitled to judgment as a matter of law.

VIII.

Section 6321 imposes a lien in favor of the United States on all property and rights to property of a person when demand for payment of that person's liability for taxes has been made and the person fails to pay those taxes. The lien arises when the assessment is made. Sec. 6322. Section 6323(a) requires the Secretary to file notice of Federal tax lien if such lien is to be valid against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor. Behling v. Commissioner, 118 T.C. 572, 575 (2002). Thus, a lien is nothing other than a security device that assures the Government of its priority over other possible creditors. Elliott, Federal Tax Collections, Liens, and Levies, par. 9.05 (2d ed. 2005). Unlike a levy, a lien does not deprive a taxpayer of property. Id.; see also United States v. Whiting Pools, Inc., 462

U.S. 198, 210-211 (1983).

Section 6320 provides that the Secretary shall furnish the person described in section 6321 with written notice of the filing of a notice of lien under section 6323. Section 6320 further provides that the person may request administrative review of the matter in the form of an Appeals Office hearing. Section 6320(c) provides that the Appeals Office hearing generally shall be conducted consistent with the procedures set forth in section 6330(c), (d), and (e).

Section 6330 generally provides that the Commissioner cannot proceed with collection by levy until the person has been given notice and the opportunity for an administrative review of the matter (in the form of an Appeals Office hearing) and, if dissatisfied, with judicial review of the administrative determination. See Davis v. Commissioner, 115 T.C. 35, 37 (2000); Goza v. Commissioner, 114 T.C. 176, 179 (2000). Section 6330(c) prescribes the matters that a person may raise at an Appeals Office hearing. Section 6330(d) provides for judicial review of the administrative determination.

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IX.

Petitioner's petition does not comply with the pleading requirements set forth in Rule 331(b)(4) and (5) in that Petitioner's allegations are so generalized and non-specific as to leave in doubt exactly what his complaints are, other than the denial of "substantive due process". Nevertheless, it may be presumed that Petitioner seeks to challenge the existence or amount of the underlying tax liabilities for 2001 and 2002.

Section 6330(c)(2)(B) provides that the existence or the amount of the underlying tax liability may be contested but only if the person did not receive a notice of deficiency or did not otherwise have an earlier opportunity to dispute such tax liability. Goza v. Commissioner, supra at 180-181; see Sego v. Commissioner, 114 T.C. 604, 609 (2000). However, in the instant case, Respondent sent Petitioner a notice of deficiency for 2001 and 2002 by certified mail addressed to him at his last known address, i.e., his current address. There is nothing in the record to suggest that Petitioner did not receive the notice of deficiency. Indeed, Petitioner has never denied receipt. See Rule 121(d); see also Zenco Engg. Corp. v. Commissioner, 75 T.C. 318, 323

(1980)("There is a strong presumption in the law that a properly addressed letter will be delivered, or offered for delivery, to the addressee."), affd. without published opinion 673 F.2d 1332 (7th Cir. 1981); Clough v. Commissioner, 119 T.C. 183, 187-188 (2002)(in general, and in the absence of clear evidence to the contrary, compliance with certified mail procedures raises a presumption of official regularity in delivery and receipt with respect to notices sent by the Commissioner). Indeed, Petitioner received other IRS notices that were sent to him at his residence address, e.g., lien notice, final notice of intent to levy, notice of determination. Thus, having forgone the opportunity of challenging the notice of deficiency by commencing an action for redetermination in this Court, Petitioner is barred from challenging the existence or the amount of his underlying liabilities for 2001 and 2002 in the instant proceeding.

But even if Petitioner is not so barred, it is clear that his reporting position, i.e., that wages paid to him by MTA-New York City Transit for operating a bus constitute foreign earned income, is frivolous and groundless. See Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984) ("We perceive no need to

refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit."). Suffice it to say that Petitioner, a New York resident, is a taxpayer subject to the Federal income tax who is obliged to file a Federal income tax return and pay Federal income tax on his wages. See secs. 1, 61(a)(1), 6012(a)(1), 7701(a)(1) and (14). Regarding the taxability of compensation, see United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable.").

Petitioner's generalized and non-specific allegation that all legal and administrative requirements were not satisfied is belied by the record. Thus: Petitioner filed frivolous returns; Respondent determined deficiencies and additions to tax and properly sent Petitioner a notice of deficiency; Petitioner defaulted on the notice; Respondent properly assessed the deficiencies and additions to tax, as well as statutory interest, and sent Petitioner a notice and demand for payment; Petitioner failed to satisfy his liabilities;

Respondent sent Petitioner, pursuant to sections 6320 and 6330, a notice of filing of Federal tax lien and final notice of intent to levy; Petitioner timely requested administrative review; and Respondent's Appeals Office afforded Petitioner a hearing, but ultimately sustained both the tax lien and the proposed levy and sent Petitioner a notice of determination affording him recourse to this Court. In short, Petitioner was provided all the due process that the law requires.

In short, Petitioner has raised no issue that would preclude the granting of summary judgment in Respondent's favor. See also Rule 331(b)(4) ("Any issue not raised in the assignments of error shall be deemed to be conceded.").

X.

We turn now to that part of Respondent's motion, as supplemented, that asks for the imposition of a penalty on Petitioner pursuant to section 6673.

As relevant herein, section 6673(a)(1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of $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

proceeding is frivolous or groundless. The Court has indicated its willingness to impose such penalty in lien and levy cases, Pierson v. Commissioner, 115 T.C. 576, 580-581 (2000), and has in fact imposed a penalty in many such cases, e.g., Cipolla v. Commissioner, T.C. Memo. 2004-6.

We are convinced that Petitioner instituted or maintained the present proceeding primarily for delay. In this regard, it is clear that Petitioner regards this case as nothing but a vehicle to protest the tax laws of this country and to espouse his own misguided views, which we regard as frivolous and groundless. In short, having to deal with this matter wasted the Court's time, as well as Respondent's, and taxpayers with genuine controversies may have been inconvenienced. The direct and immediate consequence of filing a frivolous petition is delay.

Petitioner was expressly advised by Respondent's Appeals Office in the Attachment to the March 13, 2008 notice of determination of this Court's opinion in Pierson v. Commissioner, supra, and the possibility of monetary sanctions up to $25,000. Further, in a prior collection review case commenced and prosecuted by Petitioner at dkt. No. 7221-07L, the Court imposed a $5,000 penalty on him pursuant to

section 6673(a)(1). And, in a prior action for redetermination commenced and prosecuted by Petitioner at dkt. No. 26157-08, Petitioner was the recipient of a $7,500 penalty under section 6673(a)(1).

Many years ago, Supreme Court Justice Oliver Wendell Holmes said: "Taxes are what we pay for civilized society." Unfortunately, Petitioner feels no obligation to pay his fair share.

In view of the foregoing, and as Petitioner remains undeterred, he deserves a significant penalty under section 6673(a). Accordingly, we shall grant that part of Respondent's motion requesing a sanction and impose a penalty on Petitioner in the amount of $10,000.

XI.

In conclusion: We shall enter an Order And Decision (1) granting Respondent's Motion For Summary Judgment, filed May 29, 2008, and supplemented July 10, 2008, September 23, 2008, January 6, 2009, and March 11, 2009; (2) ordering and deciding that Respondent may proceed with the collection actions (lien and levy) for 2001 and 2002, as determined in the March 13, 2008 notice of determination, upon which notice this case is based; and (3) ordering and deciding that Petitioner is liable for a penalty under

section 6673(a)(1) of $10,000.

XII.

This concludes the Court's oral findings of fact and opinion in this case.All right. Very well. With the reading of this bench opinion in the Hyatt case, this completes the Court's May 2009 session at New York, New York.

The Court is adjourned.

THE CLERK: All rise.

(Whereupon, at 2:57 p.m., the bench opinion in the above-entitled matter was concluded.)

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