UNITED STATES TAX COURT
WASHINGTON, DC 20217

LARRY R. LOW,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 10375-15 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

O R D E R

The petition in this case was filed on April 21, 2015, in response to a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code (notice of determination) with respect to petitioner's unpaid liabilities for 2006, 2007, 2008 and 2009 (years at issue).[1]

This case was called from the calendar for the trial session of the Court in Cleveland, Ohio, on November 28, 2016. Petitioner, Mr. Low, appeared and was heard. Respondent appeared and was heard. At that time, the parties jointly agreed to submit this case for disposition without trial as provided by Rule 122, and lodged with the Court a stipulation of facts (with exhibits), declining to offer into evidence any additional materials.

By Order dated November 28, 2016, the Court established a seriatim briefing schedule. The parties complied with this order, filing timely opening, answering, and reply briefs.

Background

[1]All section references are to the Internal Revenue Code in effect for the taxable years at issue (Code). All Rule references are to the Tax Court Rules of Practice and Procedure. All monetary amounts are rounded to the nearest dollar.

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At all times relevant, petitioner resided in Toledo, Ohio. Petitioner received a statutory notice of deficiency for the years at issue, but declined to petition this court for a redetermination of the deficiencies determined therein.

On May 7, 2014, respondent issued petitioner a Letter 1058, Final Notice of Intent to Levy and Notice of Your Right to a Hearing (levy notice) for the years at issue. Petitioner responded to the levy notice by letter. This letter constituted petitioner's timely request for a collection due process (CDP) hearing. In his letter petitioner alleged procedural errors in respondent's initial deficiency determination, and subsequent assessment thereof, for the years at issue and requested "audit reconsideration".

On February 11, 2015, petitioner and an Appeals Officer (AO) from respondent's Office of Appeals participated in the requested CDP hearing.

On March 17, 2015, the AO issued to petitioner a notice of determination sustaining the proposed levy action. In response to this notice of determination, petitioner filed timely a petition with this Court. In his petition Mr. Low alleged that the AO failed to comply with the verification requirements of section 6330(c)(1) when administering his CDP hearing.[2]

Discussion

Section 6330 requires the Commissioner to notify a taxpayer if he intends to levy on that taxpayer's property for the purpose of collecting unpaid Federal income tax liabilities. After receiving such notice, the taxpayer may request an administrative hearing before an officer of respondent's Office of Appeals. Secs. 6330(a) and (b)(1).

In an administrative CDP hearing taxpayers may raise any relevant issue, or request to be considered for collection alternatives. Sec. 6330(c)(2)(A). Taxpayers may not challenge the existence or amount of the underlying tax liability unless they did not otherwise have an opportunity to do so.[3] Sec.

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[2]In his petition, petitioner also alleged the AO improperly denied his request for a face-to-face hearing. Petitioner has, however, conceded this issue on brief.

[3]Petitioner stipulated that he received the statutory notice of deficiency for the years at issue, and failed to petition this Court for a redetermination thereof. Accordingly, petitioner is proscribed from contesting his underlying liability. Sec.

6330(c)(2)(B). Independent of any other issues raised by the taxpayer, the appeals officer administering the CDP hearing must verify that respondent met the requirements of all applicable law and administrative procedure in assessing and collecting a taxpayer's liability. Sec. 6330(c)(1). After considering all issues raised by the taxpayer, and completing the verification required by statute, the appeals officer will issue a notice of determination. Id. Dissatisfied taxpayers may then appeal to this Court for judicial review of the administrative determination. Sec. 6330(d).

When the underlying liability is not at issue, as here, we review an appeals officer's determination for abuse of discretion, to ensure that the determination was not arbitrary, capricious, or without sound basis in fact or law. Goza v. Commissioner, 114 T.C. 176, 182 (2000).

Proper Verification and the Administrative Record

In a CDP hearing, an appeals officer must verify that the requirements of all applicable law and administrative procedure have been met. Sec. 6330(c)(3)(A); see Medical Practice Solutions, LLC v. Commissioner, T.C. Memo. 2009-214, at *18-*20; see also Internal Revenue Manual (IRM) pt. 8.22.5.2 (March 29, 2012).

As the statute mandates this verification, we review an appeals officer's sec. 6330(c)(1) verification "without regard to whether the taxpayer raised it at the Appeals hearing", so long as the taxpayer has adequately raised the issue in his petition. Hoyle v. Commissioner, 131 T.C. 197, 202 (2008).

Mr. Low adequately raised and established a prima facie case with respect to this issue. See Medical Practice Solutions, LLC, T.C. Memo. 2009-214, Tax Ct. Memo LEXIS at *20; cf. Dinino v. Commissioner, T.C. Memo. 2009-284, Tax Ct. Memo LEXIS at *22-*25 (an attempt to contest verification will fail *ab initio* in the face of respondent's well-developed administrative record).

Section 6330(c)(1) verification does not require an appeals officer to rely on any particular document for verification. Craig v. Commissioner, 119 T.C. 252, 261-262 (2002). An appeals officer's reliance on transcripts and computer records

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6330(c)(2); see Sego v. Commissioner, 114 T.C. 604 (2000); Faris v. Commissioner, T.C. Memo. 2006-254.

is sufficient to comply with her statutory verification requirements. See Nestor v. Commissioner, 118 T.C. 162, 166-167 (2002).

In the notice of determination, the AO provides a perfunctory statement asserting she verified respondent's compliance with the "requirements of any applicable law or administrative procedure" by reviewing petitioner's account transcripts.

Petitioner's transcripts are not included in the record before us. In fact, we were not provided any of the documents that ordinarily comprise the administrative record, that corroborate and support an appeals officer's findings and determinations. See IRM pt. 35.6.2.18.2 (Sept. 18, 2012)(when litigating a CDP action respondent ought to provide the Court with a substantive and authenticated copy of the administrative record as described in IRM pt. 35.3.23.8.4 (July 25, 2012)(e.g.: Forms 4340, Case Activity Record Prints)).[4]

The stipulated record is astonishingly thin, composed of only four exhibits: two letters from petitioner, the levy notice, and the notice of determination. A clear record is necessary for review of any administrative proceeding. Here, the paucity of the record before the Court provides anything but clarity. It is within the Court's discretion to remand cases to respondent's Office of Appeals for clarification and supplementation of the administrative record as appropriate. See Wadleigh v. Commissioner, 134 T.C. 280, 299 (2010); Hoyle v. Commissioner, 131 T.C. 197 (2008); see also Gurule v. Commissioner, T.C. Memo. 2015-61 (remand is appropriate when the appeals officer failed to develop an administrative record sufficient for judicial review).

Because the administrative record is insufficient, and we are unable to properly evaluate whether the AO abused her discretion, we will remand this case

[4]IRM pt. 35.3.23.8.4 directs respondent's counsel, when attempting to dispose of a CDP case by means of summary judgment, to provide this Court with supporting declarations and an authenticated copy of the comprehensive administrative record. See also Rule 121(d). It would seem appropriate to expect the same when a case is similarly submitted for disposition without trial under Rule 122.

to respondent's Office of Appeals to allow the parties to clarify and supplement the administrative record as appropriate.[5]

Petitioner's Arguments On Brief

Section 6673(a)(1) authorizes this Court to require a taxpayer to pay to the United States a penalty not to exceed $25,000 if the taxpayer took frivolous or groundless positions in the proceedings or instituted the proceedings primarily for delay. A position maintained by the taxpayer is 'frivolous" where it is "contrary to established law and unsupported by a reasoned, colorable argument for change in the law." See e.g., Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986).

In his brief, petitioner advanced shopworn arguments characteristic of anti-tax rhetoric that has been universally rejected by this and other courts. See Wasson v. Commissioner, 59 Fed. Appx. 808 (6th Cir. 2003)(section 6673 penalty upheld where taxpayer advanced a near-identical frivolous position); see also Davis v. Commissioner, 301 Fed. Appx. 301 (6th Cir. 2008), aff'g T.C. Memo 2007-201, cert denied 558 U.S. 887. We will not painstakingly address petitioner's assertions "with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984).

We urge Mr. Low to reconsider any desire he may have to continue pressing frivolous positions on remand. We warn petitioner that we may impose a sec.

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[5]The levy notice informs petitioner that his "unpaid amount from prior notices may include tax, penalties, and interest you still owe." The record does not contain any documentation partitioning petitioner's gross amount due into amounts attributable to tax, additions to tax, interest, or penalties. The levy notice also appears to impose an unexplained "Additional Penalty" of $102.84.

The record does not indicate which penalties respondent imposed or assessed. The notice of determination does not mention whether the AO verified respondent's assessment of any penalties met the requirements of sec. 6751(b)(1), or if such verification was unnecessary under sec. 6751(b)(2). Similarly, the record lacks any documentation (such as a Form 8248) establishing--if necessary--respondent's compliance with sec. 6751. See Graev v. Commissioner, 147 T.C. __,__ (Nov. 30, 2016); see also Chai v. Commissioner, 2017 U.S. App. LEXIS 4866 (2d Cir. 2017), aff'g in part, rev'g in part and remanding T.C. Memo. 2011-273.

6673 penalty if he returns to this Court making similar frivolous arguments in the future.

Upon due consideration and for cause, it is hereby

ORDERED that on the Court's own motion, this case is remanded to respondent's Office of Appeals for further hearing. The aforementioned hearing shall take place at a reasonable and mutually agreed upon date and time by the parties, but no later July 7, 2017. It is further

ORDERED that on or before August 6, 2017, the parties shall, jointly or separately, report to the Court as to the current status of this case. The status report shall also propose further action taken by the Court.

The Court will thereupon take whatever action it deems appropriate.

(Signed) Joseph W. Nega
Judge

Dated: Washington, D.C.
May 8, 2017