

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

JOHN M. NORRIS,)		
)		
Petitioner,)		
)		
v.)	Docket No. 6997-15,	7032-15,
)	7033-15.	
COMMISSIONER OF INTERNAL REVENUE,)		
)		
Respondent)		

ORDER

John M. Norris seeks review of the Commissioner’s deficiency determinations for 2008, 2009, and 2011. The Commissioner moved for summary judgment for these consolidated cases under Rule 121,¹ arguing that the undisputed facts require decision in his favor. The Commissioner also asks that we impose a sanction under section 6673. Mr. Norris does not dispute the relevant facts and has only set forth frivolous arguments. Because we find that there is no genuine dispute as to any material fact, we grant the Commissioner’s motion for summary judgment.

Background

In 2008, 2009, and 2011, Mr. Norris worked as a pharmacist in Tennessee. Mr. Norris was an independent contractor for A-Line Staffing Solutions LLC in 2008, 2009, and 2011. Mr. Norris was also an independent contractor for Health Research Associates Corp. in 2008 and 2009 and an independent contractor for Decatur-Wil-Sav, Inc. in 2011. Mr. Norris was married for all the years at issue. Mr. Norris did not file tax returns for 2008, 2009, and 2011.²

¹ Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code in effect for the years at issue.

² Many of these facts have been deemed admitted. The Commissioner filed and served his request for admissions on November 2, 2015. Mr. Norris never responded. Under Rule 90(c), the matters contained in the request for admissions are deemed admitted.

On December 8, 2014, the Commissioner issued three separate notices of deficiency to Mr. Norris, one each for 2008, 2009, and 2011. In the notices of deficiency, the Commissioner determined that Mr. Norris had unreported income from nonemployee compensation. The Commissioner also asserted additions to tax for failure to file under section 6651(a)(1), failure to pay under section 6651(a)(2), and failure to make estimated tax payments under section 6654(a).

Mr. Norris timely filed a separate petition as to each notice of deficiency.³ Mr. Norris resided in Tennessee at the time he filed these petitions. In each petition, Mr. Norris disagrees with the Commissioner's determinations, arguing that he is not liable to pay Federal income taxes because he is a citizen of Tennessee and all of his income is "attributable entirely" to Tennessee.⁴

The Commissioner filed a motion for summary judgment under Rule 121 and an accompanying memorandum. The Commissioner argues that there is no dispute over any material fact. The Court ordered Mr. Norris to respond, but he didn't.

Discussion

The issue before this Court is whether we should grant the Commissioner's motion for summary judgment. Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in controversy. We may grant summary judgment only if there is no genuine dispute as to any material fact.⁵

The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute as to any material fact.⁶ "In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them

³ The case at docket number 6997-15 relates to 2008; the case at docket number 7032-15 relates to 2009, and the case at docket number 7033-15 relates to 2011. The Court consolidated these cases on February 11, 2016.

⁴ This is the same argument Mr. Norris asserted in a prior case of his, docket number 7682-14L. In an order and decision dated May 27, 2015, we found in favor of the Commissioner and also imposed a \$1,000 penalty on Mr. Norris under section 6673 for asserting frivolous arguments.

⁵ Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

⁶ Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

must be considered in the light most favorable to the nonmoving party.”⁷ When a motion for summary judgment is made and properly supported, the nonmoving party may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine dispute for trial.⁸ As a general matter, the Commissioner’s determinations in the notice of deficiency are presumed correct, and the taxpayer bears the burden of proving an error.⁹

The Commissioner determined that Mr. Norris had unreported income from third-party reporting. Mr. Norris does not dispute the unreported income Commissioner attributed to him. Instead, he argues he is a citizen of Tennessee, and should not have to pay Federal income taxes. It has long been decided that “[i]n order to be a citizen of a state, it is elementary law that one must first be a citizen of the United States.”¹⁰ The Commissioner’s determinations are sustained.

The Commissioner asserted three additions to tax: failure to file, failure to pay, and failure to make estimated tax payments. The Commissioner bears the burden of production for additions to tax before the burden shifts to taxpayers to prove that the addition to tax should not apply.¹¹

The Commissioner asserted an addition to tax for failure to timely file a Federal income tax return for 2008, 2009, and 2011. The Commissioner stated in his requests for admissions that Mr. Norris did not file his tax returns or pay his Federal income tax liability for 2008, 2009, and 2011. Mr. Norris did not dispute these statements, and these facts were deemed admitted. Thus, the Commissioner has met his burden of production, and the burden shifts to Mr. Norris. Mr. Norris does not dispute the failure to file addition to tax. Rule 34(b)(4) provides that “[a]ny issue not raised in the assignments of error shall be deemed to be conceded.” Accordingly, the Commissioner is entitled to summary judgment as to the failure to file addition to tax under section 6651(a)(1).

The Commissioner also asserted an addition to tax for failure to pay the amount of tax required to be shown on the returns for 2008, 2009, and 2011. The Commissioner established that Mr. Norris did not pay his Federal income tax

⁷ FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

⁸ Rule 121(d).

⁹ Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933).

¹⁰ Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090-1091 (9th Cir. 1983) (quoting Factor v. Pennington Press, Inc., 230 F. Supp. 906, 909 (N.D. Ill. 1963)).

¹¹ See sec. 7491(c); Higbee v. Commissioner, 116 T.C. 438, 446-447 (2001).

liability for 2008, 2009, and 2011 through his requests for admissions. The Commissioner has met his burden of production, and the burden shifts to Mr. Norris. Mr. Norris does not dispute the failure to pay addition to tax. Accordingly, the Commissioner is entitled to summary judgment as to the failure to pay addition to tax under section 6651(a)(2).

The Commissioner asserted an addition to tax for failure to make estimated tax payments. The Commissioner has shown that Mr. Norris had income and owed tax for 2008, 2009, and 2011. Accordingly, the Commissioner has met his burden of production, and the burden shifts to Mr. Norris. Mr. Norris does not dispute the failure to make estimated tax payments. Accordingly, the Commissioner is entitled to summary judgment as to the failure to make estimated tax payments addition to tax under section 6654(a).

Finally, the Commissioner asked the Court to impose a penalty under section 6673. Under section 6673(a)(1), this court may require a taxpayer to pay a penalty not in excess of \$25,000 whenever it appears: (1) the taxpayer has instituted or maintained proceedings primarily for delay; (2) the taxpayer's position is frivolous or groundless; or (3) the taxpayer unreasonably failed to pursue available administrative remedies. A taxpayer's position is frivolous or groundless if it is "contrary to established law and unsupported by a reasoned, colorable argument for change in the law."¹²

In its May 27, 2015, order and decision in docket number 7682-14L, the Court imposed a penalty on Mr. Norris under section 6773 for making frivolous submissions to the Court. The petition in this case was filed months before we sanctioned Mr. Norris, and we might be inclined to give him the benefit of a doubt, thinking that he might have decided not to continue to press frivolous arguments. But three months after being sanctioned in docket number 7682-14L, Mr. Norris filed "Petitioner's Reply to CIR's Answer" in this case. In that document, he persisted in advancing the same frivolous arguments that we rejected in his prior case -- that he does not owe a Federal income tax liability because all of his income is from Tennessee. Because Mr. Norris perpetuated an argument for which he was previously sanctioned, an increased sanction is warranted. Accordingly, we will impose a penalty under section 6673(a)(1) of \$5,000. We also caution Mr. Norris that the Court may impose a sanction of up to \$25,000, and that continuing to pursue frivolous claims may result in further increased sanctions.

¹² Williams v. Commissioner, 114 T.C. 136, 144 (2000) (quoting Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986)).

Conclusion

There is no genuine dispute as to any material fact with respect to Mr. Norris' 2008, 2009, and 2011 tax liabilities, and we must render a decision for the Commissioner as a matter of law. Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment, filed August 30, 2016, is granted. It is further

ORDERED that a separate decision will be entered for docket numbers 6997-15, 7032-15, and 7033-15.

(Signed) Ronald L. Buch
Judge

Dated: Washington, D.C.
November 21, 2017