

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

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| DEBRA J. RAY,                     | ) |                        |
|                                   | ) |                        |
| Petitioner,                       | ) |                        |
|                                   | ) |                        |
| v.                                | ) | Docket No. 12358-16 L. |
|                                   | ) |                        |
| COMMISSIONER OF INTERNAL REVENUE, | ) |                        |
|                                   | ) |                        |
| Respondent                        | ) |                        |

**ORDER AND DECISION**

This case is before the Court on cross-motions for summary judgment. The case centers on a restitution payment that Ms. Ray was ordered to make as a result of a criminal tax fraud conviction for filing a false return for 2000. Ms. Ray argues that the Commissioner improperly charged her interest on the restitution assessment and that she paid the restitution amount in full. We agree.

Background

On November 10, 2010, Ms. Ray pled guilty to one count of filing a false return for 2000 under section 7206.<sup>1</sup> As part of the judgment in the case, she was required to pay \$7,466 in restitution.<sup>2</sup> In the amended judgment, the District Court waived the interest on the restitution and gave Ms. Ray credit for a \$250 payment toward the restitution. At the time of the judgment, Ms. Ray had made a \$100 payment. She made two more payments, one for \$65 on January 31, 2011, and one for \$7,151 on March 24, 2011. On February 24, 2011, the United States Attorney for the Central District of Illinois filed a satisfaction of monetary judgment with the District Court indicating that the judgment was satisfied and the restitution had been “paid in full”.

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<sup>1</sup>All section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated.

<sup>2</sup>All dollar amounts are rounded to the nearest dollar.

Initially, the Commissioner allocated the restitution payments to outstanding liabilities for years other than 2000. In June of 2011, Ms. Ray signed a Form 4549, Income Tax Examination Changes for 2000. By signing, she agreed to the assessment of a tax deficiency of \$7,015, a section 6663 penalty of \$5,261, a section 6651 penalty of \$814, and interest computed from July 2011 of \$10,342 for 2000. On February 24, 2014, the Commissioner assessed the restitution plus interest on the restitution under section 6601. The Commissioner calculated that Ms. Ray had paid only \$7,216, rather than the full restitution amount of \$7,466. At around the same time that the Commissioner assessed the restitution amount, Ms. Ray's payment was allocated to her 2000 liability.

On November 20, 2014, the Commissioner sent Ms. Ray a Notice of Federal Tax Lien Filing and Your Right to Hearing as a part of an effort to collect the outstanding restitution balance and interest on the restitution payment. Ms. Ray timely requested a collection hearing. In her request for a hearing Ms. Ray indicated that she was seeking a collection alternative because she could not pay the liability and that she wished to contest the underlying liability because she had already paid it.

On March 6, 2015, Ms. Ray had her collection hearing. At that hearing she contested the interest charged on the restitution and requested that the interest be abated. Ms. Ray also argued that she had paid the full amount of the restitution as shown by the satisfaction of monetary judgment filed in the District Court.

At the time of the hearing the settlement officer was under the mistaken impression that the collection action had been initiated to collect the underlying liability, rather than the interest on the restitution. After this confusion was cleared up, the settlement officer determined that the notice of the lien was improperly filed through the automated lien system and should have been filed manually.

As a result of the hearing and the supporting documents submitted by Ms. Ray, the settlement officer determined that the lien should be lifted and that Ms. Ray's accounts should be placed in currently not collectable status. The settlement officer did not abate the interest charged on the restitution, and he did not address whether Ms. Ray had paid the full amount of the restitution. He confirmed his determinations with his manager.

On April 8, 2015, the settlement officer requested that the lien be withdrawn. He informed Ms. Ray by letter that the lien was withdrawn but that he did not abate the interest. The letter was silent as to the outstanding \$250 of restitution.

However the appeals officer included an “interest & penalty computation” worksheet for 2000 as an attachment to the letter. That worksheet included a \$250 “tax & penalty” suggesting that he did not address Ms. Ray’s contention that the restitution amount was paid in full.

Soon after, Ms. Ray responded with a letter requesting an appeal and reiterating her request that the interest be abated as well as her claim that she had paid the restitution amount in full. The settlement officer referred her case to Appeals. Eventually, after some confusion the case was assigned to an appeals officer.

The appeals officer examined Ms. Ray’s case, and determined that it did not merit interest abatement. He found that there were not any substantial ministerial or managerial acts that would warrant additional abatements of interest. He also determined that Ms. Ray owed \$250 of restitution. On April 22, 2016, the appeals team manager sent Ms. Ray a notice of determination concerning collection action(s) under section 6320 and/or 6330 of the Internal Revenue Code. The notice of determination informed Ms. Ray that she was not entitled to an abatement of the interest on the restitution. Ms. Ray filed a timely petition to this Court. At the time of the petition Ms. Ray resided in Illinois. On August 31, 2017, the Commissioner filed a motion for summary judgment arguing that both the restitution assessment and interest charged on the restitution under section 6601 are proper.

Following the petition but before the trial date set for Ms. Ray’s case, we released an opinion in Klein v. Commissioner, 149 T.C. No. 15 (2017). That case bears a striking resemblance to this one. In Klein we held that the Commissioner does not have the authority to charge interest on restitution under section 6601. Given the similarities between Klein and Ms. Ray’s case, we asked the parties to brief the Court on Klein and its effect on this case.

In response Ms. Ray filed a motion for summary judgment. She argued that she had paid the restitution in full and that under Klein the Commissioner cannot charge interest on the restitution. The Commissioner agreed that Klein controlled, and under Klein, there was no interest due on the restitution. The Commissioner did not concede that all of the restitution had been paid.

### Discussion

Ms. Ray argues that she has paid the full amount of the restitution and points to the satisfaction of judgment filed by the government as proof. The Commissioner claims that Ms. Ray still owes \$250 in restitution.

### 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 are no genuine disputes as to any material facts.<sup>3</sup> Summary judgment is intended to expedite litigation and avoid unnecessary and time-consuming trials.<sup>4</sup>

The moving party bears the burden of proving that no genuine issue exists as to any material fact and that he or she is entitled to judgment as a matter of law.<sup>5</sup> “In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the non-moving party.”<sup>6</sup> 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.<sup>7</sup>

### Judicial Review of Appeals Determinations

In a collection hearing, a taxpayer may raise any issue that is relevant to an unpaid tax or proposed levy, including challenges to the appropriateness of the collection action and offers of collection alternatives.<sup>8</sup> In addition, a taxpayer may challenge the existence or amount of the underlying tax liability if the taxpayer did

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<sup>3</sup>Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

<sup>4</sup>Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988).

<sup>5</sup>Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994).

<sup>6</sup>FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

<sup>7</sup>Rule 121(d).

<sup>8</sup>Sec. 6330(c)(2)(A).

not have the opportunity to dispute the liability.<sup>9</sup> When a taxpayer properly raises the underlying liability we review de novo.<sup>10</sup>

Here, Ms. Ray has not had a prior opportunity to dispute the amount of restitution that remains due, as such we review de novo. Although Ms. Ray has continuously argued that she paid the full amount of the restitution, neither the appeals officer nor the settlement officer addressed the issue. We will address it here.

### Res Judicata

Res judicata is a common-law doctrine that serves to promote judicial economy by eliminating repetitious suits between parties.<sup>11</sup> We have previously stated that res judicata provides:

[W]hen a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment.<sup>12</sup>

Three requirements must be met before applying the doctrine of res judicata: (1) The parties in the current action must be the same or in privity with the parties of a previous action; (2) the claims in the current action must be in substance the same as the claims in the previous action; (3) the earlier action must have resulted in a final judgment on the merits.<sup>13</sup>

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<sup>9</sup>Sec. 6330(c)(2)(B).

<sup>10</sup>Sego v. Commissioner, 114 T.C. 604, 609-610 (2000).

<sup>11</sup>Gustafson v. Commissioner, 97 T.C. 85, 91 (1991).

<sup>12</sup>Gustafson v. Commissioner, 97 T.C. at 91 (1991) (internal citations omitted).

<sup>13</sup>Estate of King v. Commissioner, T.C. Memo. 1991-151, 61 T.C.M (CCH) 2334, 2335 (1991).

In Creel v. Commissioner, 419 F.3d 1135 (11th Cir. 2005), the Court of Appeals for the Eleventh Circuit affirmed this Court's ruling that a satisfaction of judgment extinguishes the Commissioner's claims for any issue specifically contemplated in the judgment and the satisfaction of judgment. The satisfaction of judgment is a final judgment in the case. For Mr. Creel, that included both civil and criminal liabilities.<sup>14</sup> In Ms. Ray's case, this includes only criminal liabilities.

When the District Attorney filed the satisfaction of monetary judgment in the District Court declaring that "The Monetary Judgment in [this] case has been paid in full" he extinguished the Commissioner's rights to collect any more restitution under the amended judgment. While the Commissioner may still seek civil penalties against Ms. Ray, barring a showing of fraud or some other factor invalidating the amended judgment, or the satisfaction of monetary judgment, or regarding the payment of the restitution, the criminal case, including the further collection restitution, is closed.

Here the three prerequisites for the application of res judicata are met. The parties are the same. While the government was represented by a district attorney in the criminal case and the Commissioner in this case, both are agents of the United States.<sup>15</sup> The claims are in substance the same: whether Ms. Ray has paid the restitution required by the amended judgment. The satisfaction of monetary judgment is a final judgment, to which the Commissioner is bound in this case.

### Conclusion

Ms. Ray has paid the full amount of the restitution according to the government's own satisfaction of judgment. The doctrine of res judicata precludes the Commissioner from claiming otherwise. The Commissioner has recognized that Klein is controlling and that he may not charge interest under section 6601 on the restitution. Thus no interest is due on the restitution amount. Accordingly, it is

ORDERED that the motion for summary judgment filed by the petitioner on October 25, 2017, is granted. It is further

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<sup>14</sup>Creel v. Commissioner, 419 F.3d 1135 (11th Cir. 2005).

<sup>15</sup>Gammill v. Commissioner, 62 T.C. 607, 614-615 (1974).

ORDERED that the motion for summary judgment filed by respondent on August 31, 2017 is denied. It is further

ORDERED and DECIDED that the respondent shall abate the assessments of restitution and underpayment interest under section 6601 for 2000. It is further

ORDERED and DECIDED that determinations set forth in the notice of determination concerning collection action(s) under section 6320 and/or 6330 of the Internal Revenue Code issued to petitioner on April 22, 2016, upon which this case is based, are not sustained.

**(Signed) Ronald L. Buch**  
**Judge**

Entered: **DEC 22 2017**