

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

STEVEN L. MARVIN,)	
)	
Petitioner,)	
)	
v.)	Docket No. 23092-17 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This collection review case was brought pursuant to section 6330 and is before the Court on respondent's Motion for Summary Judgment, filed pursuant to Rule 121.¹ Respondent seeks to sustain a determination made by the Internal Revenue Service (IRS) Office of Appeals (Appeals Office) to proceed with a proposed levy to collect petitioner's unpaid Federal income tax for the taxable year 2015 (year in issue). Although the Court directed petitioner to file a response to respondent's motion, he failed to do so.²

Background

The record reflects that petitioner filed a delinquent Federal income tax return for the taxable year 2015. Respondent subsequently assessed the tax reported on the return, as well as additions to tax and interest, applied a credit for income tax withholding, and sent petitioner a notice and demand for payment of the balance due. Petitioner failed to remit payment.

¹Section references are to sections of the Internal Revenue Code, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

²By failing to file a response, petitioner has waived his right to contest respondent's motion. Rule 121(d); Aguirre v. Commissioner, 117 T.C. 324, 327 (2001).

Respondent then sent petitioner a notice of intent to levy for the year in issue. Petitioner timely submitted to the Appeals Office a request for an administrative hearing indicating that he could not pay the balance due and further alleging "I am not liable for all or part of the taxes".

The Appeals Office settlement officer assigned to petitioner's case sent him a letter requesting that he submit (1) an amended income tax return for the year in issue (if he believed that his original tax return was incorrect) and (2) financial information to permit the Appeals Office to determine whether he might be eligible for a collection alternative. Although petitioner sent a letter to the settlement officer confirming the date that she had set for the administrative hearing, he did not submit either an amended income tax return or the requested financial information, and he did not call the settlement officer on the date set for the administrative hearing. The settlement officer sent a second "last chance" letter to petitioner, but he did not respond.

The Appeals Office thereafter issued to petitioner a notice of determination sustaining the proposed levy action. Petitioner responded by filing a petition for review with the Court asserting in relevant part that he is not subject to income tax or the proposed collection action because he is not an officer, employee, or elected official of the United States or a federal contractor, that only U.S. territories, possessions, and enclaves are subject to tax, and that the notice of determination was not properly verified under penalty of perjury. Respondent timely filed an answer to the petition.

Petitioner subsequently filed a motion for injunction requesting that the Court enjoin respondent from remanding the case to the Appeals Office and from proceeding with a jeopardy assessment. Respondent filed a notice of objection to petitioner's motion. The Court denied petitioner's motion because respondent was not seeking to remand the case nor was there any indication of improper collection activity. Petitioner then filed a motion for reconsideration of the Court's Order denying his motion for injunction asserting that he is not a taxpayer subject to a tax assessment by the IRS.

As indicated above, respondent filed a motion for summary judgment asserting that the Appeals Office did not abuse its discretion in sustaining the proposed levy action. Respondent also moved to impose a penalty under section 6673 on the ground that the petition contains only frivolous and groundless arguments and noting that the Court had warned petitioner in past proceedings

about the possibility of sanctions.³ In response, petitioner filed a motion to strike respondent's motion for summary judgment. The Court summarily denied petitioner's motion to strike and directed petitioner to file a response to respondent's motion.

Discussion

Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b). Respondent's motion for summary judgment is well founded based on the averments therein and related exhibits attached thereto. As discussed more fully below, we conclude that there is no dispute as to a material fact and that respondent is entitled to judgment as a matter of law.

I. Proposed Levy

Section 6331(a) authorizes the Commissioner to levy upon property and rights to property of a taxpayer who is liable for taxes and who fails to pay those taxes within 10 days after notice and demand for payment is made. Section 6330(a) provides that the levy authorized in section 6331(a) may be made only if the Secretary has notified such person in writing of the right to an administrative hearing before the levy is enforced. Upon timely request, the person is entitled to an administrative hearing before the Appeals Office. Sec. 6330(b)(1).

In rendering an administrative determination in a collection review proceeding under section 6330, the Appeals Office must verify that any applicable law or administrative procedure has been met in processing the case. Sec. 6330(c)(1), (3)(A). The Appeals Office also must consider any issues raised by the taxpayer relating to the collection action, including offers of collection alternatives, appropriate spousal defenses, and challenges to the appropriateness of the

³Petitioner has previously filed petitions with the Court at docket Nos. 13646-15S and 31463-15 regarding taxable years 2012 and 2013. In two separate Orders relating to the latter case, the Court cautioned petitioner about the possibility of sanctions under sec. 6673 if he persisted in taking frivolous or groundless positions.

collection action. Sec. 6330(c)(2)(A), (3)(B). A taxpayer may challenge the existence or amount of his or her underlying tax liability if the taxpayer did not receive a notice of deficiency or did not otherwise have an opportunity to dispute such tax liability. Sec. 6330(c)(2)(B). Finally, the Appeals Office must consider whether the collection action balances the need for efficient collection against the taxpayer's concern that collection be no more intrusive than necessary. Sec. 6330(c)(3)(C).

The Court has jurisdiction to review the administrative determination made by the Appeals Office. Sec. 6330(d)(1). Where the taxpayer's underlying tax liability is in dispute, we review the Appeals Office administrative determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Otherwise, we review the determination for abuse of discretion. Id. at 182. An abuse of discretion occurs if the Appeals Office exercises its discretion "arbitrarily, capriciously, or without sound basis in fact or law." Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

As outlined above, petitioner stated in his request for an administrative hearing that he cannot pay the balance due, which could signal a request for currently not collectible status. However, despite ample instruction and advance notice, petitioner did not participate in the administrative hearing, nor did he provide the type of financial information that would allow the Appeals Office to evaluate his eligibility for a collection alternative, such as currently not collectible status. Similarly, although petitioner suggested that he did not owe tax for the year in issue, he failed to submit an amended income tax return or otherwise show that his original tax return was incorrect. See Akonji v. Commissioner, T.C. Memo. 2012-56, 2012 Tax Ct. Memo, LEXIS 49, at *6-*7 (holding that the Appeals Office did not abuse its discretion in sustaining a collection action when the taxpayer failed to present necessary information or participate in the scheduled conference); Doonis v. Commissioner, T.C. Memo. 2014-168, at *10 (noting that to be eligible for currently not collectible status, a taxpayer must show that he has no ability to pay his outstanding tax liabilities based on his current assets, income, and expenses).

The Court notes that the petition in this case includes little more than baseless allegations and frivolous and groundless arguments regarding petitioner's underlying tax liability. We note that the record includes a Form 4340, Certificate of Assessments, Payments, and Other Specified Matters, which shows that the IRS followed normal procedures and properly entered assessments against petitioner for the year in issue. Petitioner's arguments have been uniformly rejected by this

and other courts and, therefore, do not merit discussion. See Wnuck v. Commissioner, 136 T.C. 498, 511 (2011) (stating that the Court need not address frivolous arguments given the resulting disadvantage to other litigants with legitimate issues, the public generally, and the Court itself).

The Court is satisfied that the Appeals Office properly verified that the requirements of all applicable laws and administrative procedures were met in the processing of petitioner's case and that the proposed levy balances the Government's need for the efficient collection of taxes with petitioner's concerns that the collection action be no more intrusive than necessary. In sum, the Appeals Office did not abuse its discretion.

II. Section 6673 Penalty

Respondent also moves for the imposition of a penalty under section 6673(a). That section authorizes the Court to require a taxpayer to pay a penalty up to \$25,000 whenever it appears that proceedings have been instituted or maintained primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless. As noted above, petitioner is no stranger to the Court and he was duly warned in a prior case that he should not come to the Court and make frivolous and groundless arguments. Nevertheless, petitioner's assertions that he is not subject to Federal income tax and that the IRS may not proceed with a collection action against him amount to nothing more than frivolous and groundless tax protester rhetoric. It appears that petitioner brought this action solely for purposes of delay and addressing this matter has resulted in a needless waste of the Court's resources. Accordingly, the Court will impose a penalty of \$500 on petitioner pursuant to section 6673(a).

Upon due consideration and for cause, it is

ORDERED that this case is stricken from the Court's special session set to begin in Detroit, Michigan, on September 5, 2018. It is further

ORDERED that petitioner's Motion for Reconsideration of Order Dated April 3, 2018, filed April 17, 2018, is denied. It is further

ORDERED that respondent's Motion for Summary Judgment, filed June 15, 2018, is granted in that respondent is entitled to summary judgment. It is further

ORDERED that respondent's Motion for Summary Judgment, filed June 15, 2018, is granted in that petitioner is liable for a penalty of \$500 under section 6673(a). It is further

ORDERED AND DECIDED that respondent's notice of determination concerning collection actions under section 6320 and/or 6330, dated October 27, 2017, upon which this case is based, is sustained.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

ENTERED: JUL 31 2018