UNITED STATES TAX COURT
WASHINGTON, DC 20217

RODNEY P. WALKER, ET AL.,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 16108-14 L, 9435-15 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

O R D E R TO SHOW CAUSE

Background

These consolidated cases are before us to review two determinations by the Internal Revenue Service (IRS) Appeals Office (Appeals) following two collection due process (CDP) hearings conducted pursuant to sections 6320(b) and (c) and 6330(b) and (c).[1] Appeals' first determination was to sustain respondent's notice of Federal tax lien (NFTL) with respect to petitioner's unpaid 2001 through 2007 Federal income tax, and its second determination was to sustain respondent's notice of intent to levy (levy notice) with respect to petitioner's unpaid 2007 and 2009 income tax. We review the determinations pursuant to section 6330(d)(1). Each party has moved for summary judgment in his favor (petitioner's motion and respondent's motion).

On February 26, 2018, we filed our memorandum opinion in this case, Walker v. Commissioner, T.C. Memo. 2018-22, and, on February 28, 2018, we issued an order implementing our opinion (February 28 order). By that order, we denied petitioner's motion for summary judgment and granted respondent's motion for summary judgment in part in that, in docket No. 9435-15L, respondent may proceed with collection of petitioner's tax liabilities for 2001 through 2006. We

[1]All section references are to the Internal Revenue Code of 1986, as amended.

further ordered that respondent's motions for summary judgment in both docket numbers 16108-14L and 9435-15L were granted in part in that, with respect to docket number 9435-15L for 2007 and with respect to docket number 16108-14L for both 2007 and 2009, (1) Appeals had verified that the requirements of any applicable law or administrative procedure were met, (2) the NFTL hearing and the levy-notice hearing were fair and impartial, (3) neither SO Hayes nor SO Reeve had to provide petitioner with any written confirmation of her verification efforts, (4) neither settlement officer abused her discretion in denying petitioner a face-to-face hearing or the right to audio record any telephone hearing, and (5) neither abused her discretion in not considering collection alternatives.

We also remanded both docket numbers to respondent's Appeals Office for supplemental determinations clarifying the record as to the grounds on which Appeals relied in precluding petitioner from challenging his 2007 and 2009 tax liabilities. We ordered that, if petitioner was entitled to raise challenges to those liabilities, Appeals would consider such challenges and report the results of its consideration in supplemental determinations. We further ordered the parties to report on their completion or progress with respect to the remand.

We received status reports from respondent but not from petitioner. In his status report filed July 31, 2018, respondent reports that Appeals has accorded petitioner the opportunity to challenge the existence or amount of his underlying liabilities for 2007 and 2009. In particular, he reports that Settlement Officer (SO) Nathan August provided petitioner with copies of the documents showing the sources and amounts of income reported to respondent that were used to calculate the amounts of his income taxes for 2007 and 2009 as shown on the notices of deficiency mailed to petitioner and also provided petitioner with the opportunity to submit signed Forms 1040 for 2007 and 2009 showing what he contends his correct liabilities are for those two years. Respondent also reports that petitioner did not submit tax returns or produce any relevant information to SO August relating to the correct amounts of petitioner's underlying income tax liabilities for 2007 and 2009. Instead, he reports, petitioner sent to SO August a letter asserting that the notices of deficiency issued to petitioner were invalid because not prepared by an authorized delegate of the Secretary and respondent did not follow proper procedures in issuing the notices. Respondent has attached a copy of petitioner's letter, dated June 20, 2018 (the June 20 letter), to his report.

The facts reported by respondent reflect facts recited in two Supplemental Notice[s] of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 (the supplemental notices), both dated July 24, 2018, one "In Re:

Collection Due Process-Lien * * * Tax Period Ended: 12/2007" (first supplemental notice) and the second "In Re: Collection Due Process-Levy * * * Tax Period Ended: 12/2007 12/2009" (second supplemental notice). Copies of the supplemental notices are also attached to respondent's report. In an attachment to the first supplemental notice, SO August recites:

> Taxpayer's letter attempts to raise issues outside the scope of the remand particularly because Tax Court already decided that the IRS made valid tax assessments for period 2007 and that Appeals verified that the requirements of any applicable law or administrative procedure were met during the original CDP hearings. Tax Court's decision is final and conclusive as to these findings therefore, taxpayer's request for abatement of the taxes for periods 2007 is denied.

An attachment to the second supplemental notice is the same but for identifying the tax periods "2007 and 2009". Both supplemental notices conclude that petitioner failed to properly raise challenges to the underlying tax liabilities for the relevant periods during his supplemental hearing "because * * * [he] failed to present any evidence to Appeals as to * * * [his] correct tax liabilities, after being given a reasonable opportunity to do so." Therefore, both notices conclude, Appeals would maintain its determination originally made, to sustain the NFTL for 2007 and to sustain the levy notice for 2007 and 2009.

Discussion

We remanded both docket numbers 16108-14L and 9435-15L to Appeals, which provided petitioner the opportunity to challenge the existence or amount of his 2007 and 2009 underlying tax liabilities. We had already granted respondent's motions for summary judgment to the extent that, with respect to both 2007 and 2009, he had asked us to rule that Appeals had verified that the requirements of any applicable law or administrative procedure had been met. See February 28 order; see also Walker v. Commissioner, at *36. The validity of respondent's assessments of petitioner's 2007 and 2009 tax liabilities was, therefore, no longer in question. Our remand only afforded petitioner the opportunity to show that he owed less than the amounts assessed. In the face of our ruling that Appeals had verified that the requirements of any applicable law or administrative procedure had been met, petitioner was ill advised on remand of these cases to rely solely on the arguments that respondent's notices of deficiency for 2007 and 2009 were invalid because not prepared by an authorized delegate of the Secretary and

respondent did not follow proper procedures in issuing the notices. Any issue raised by petitioner other than with respect to his correct liability for 2007 and 2009, whatever the merits of that issue, was out of place.

Because petitioner did not during his supplemental hearings raise any challenge to the existence or amount of his underlying tax liabilities for 2007 or 2009, there is nothing for us to consider during any hearing we might hold with respect to the supplemental notices. See, e.g., Fleming v. Commissioner, T.C. Memo. 2017-155, at *6-7 (citing Giamelli v. Commissioner, 129 T.C. 107, 114-116 (2007), for the propositions that we consider a taxpayer's challenge to his underlying liability in a collection action case only if he properly raised that challenge at the administrative hearing and an issue is not properly raised at the administrative hearing if the taxpayer fails to request consideration of that issue by the settlement officer or if he requests consideration but fails to present any evidence after being given a reasonable opportunity to do so). We see no reason not to uphold the supplemental determinations and to sustain in full the NFTL for 2007 and the levy notice for 2007 and 2009, and, in our orders and decisions disposing of these cases, we will do so.

Finally, we come away from these cases with the distinct impression that petitioner has maintained them and, in particular, has prolonged them during the period of our remands simply to delay the collection of Federal income taxes that he rightfully owes. Petitioner had the opportunity on remand to show that respondent's determinations were in error. SO August provided him with an explanation of respondent's calculations of his 2007 and 2009 income taxes and accorded him the opportunity to file returns claiming some lesser amount of tax, but he ignored that offer. He chose to use the supplemental hearing to raise an issue on which we had already ruled and which served no purpose other than to delay completion of respondent's legitimate efforts to collect eight years of unpaid income taxes.

In pertinent part, section 6673(a)(1) provides a penalty of up to $25,000 if the taxpayer has instituted or maintained proceedings before the Tax Court primarily for delay or the taxpayer's position in the proceeding is frivolous or groundless. "The purpose of section 6673 is to compel taxpayers to think and to conform their conduct to settled principles before they file returns and litigate." Takaba v. Commissioner, 119 T.C. 285, 295 (2002). We believe that petitioner has maintained these proceedings during the period of remand primarily for delay by raising a frivolous argument. We will order petitioner to show cause why,

separately, in both docket numbers 16108-14L and 9435-15L, we should not impose on petitioner a penalty under section 6673(a)(1).

On the premises stated, it is

ORDERED that, on or before September 10, 2018, petitioner shall show cause why, in each of docket numbers 16108-14L and 9435-15L, we should not impose on him a penalty under section 6673(a)(1).

(Signed) James S. Halpern
Judge

Dated: Washington, D.C.
August 27, 2018