

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MARVEL THOMPSON,)	
)	
Petitioner,)	
)	
v.)	Docket No. 29498-12.
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
)	
Respondent.)	

ORDER AND DECISION

This matter is before the Court to decide on respondent's motion for summary judgment, filed September 25, 2018, pursuant to Rule 121.¹ Respondent contends that no genuine dispute exists as to any material fact and that the Court should find as a matter of law that for the 2007 and 2008 taxable years (years at issue) petitioner (1) had certain unreported income for the years at issue, (2) is liable for additions to tax under section 6651(a)(1) for the years at issue, and (3) is liable for an addition to tax under section 6654 for 2007.²

¹Unless 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. Some monetary amounts are rounded to the nearest dollar.

²Respondent seeks summary adjudication in his favor of the entire case. However, in his motion for summary judgment respondent makes no argument in support of summary adjudication in his favor for additions to tax under section 6651(a)(2) that were also asserted in notices of deficiency issued to petitioner for 2007 and 2008. We thus conclude that respondent has abandoned his claim for the asserted additions to tax under section 6651(a)(2) and we consider this issue as conceded by him in ruling on his motion for summary judgment. See Keifer v. Commissioner, T.C. Memo. 1983-627, 1983 Tax Ct. Memo LEXIS 164, at *5.

By Order dated September 27, 2018, the Court ordered petitioner to file a response to respondent's motion no later than November 13, 2018. As of the date of this order and decision, petitioner has not responded to either respondent's motion or to the Court's order.³

Background

During the years at issue petitioner owned several apartments in Chicago, Illinois, that he leased to low-income families through the Chicago Housing Authority's (CHA) Housing Choice Voucher Program. During 2007 petitioner received (by check) payments of \$13,470 from CHA; during 2008 petitioner received (also by check) payments of \$5,115 from the CHA. These payments were for petitioner's share of the rents paid by tenants in his apartments.

Petitioner also received (by check) payments of \$45,454 and \$12,446 from the American Society of Composers, Authors, and Publishers (ASCAP), in 2007 and 2008, respectively.⁴ These payments were for royalties due petitioner for non-dramatic public performances of certain musical work to which he claimed a right.

During the years at issue petitioner maintained a joint bank account with another individual at TCF National Bank (TCF). TCF records show that the checks from CHA and ASCAP to petitioner during the years at issue were deposited into this account.

Petitioner did not file Federal income tax returns and did not make any Federal tax payments for the years at issue.⁵ Respondent received information return documents from CHA and ASCAP reporting that petitioner during the years at issue had received the aforementioned payments from them as rents and royalties, respectively, and that no Federal income tax was withheld from those payments. Using this information, respondent prepared substitutes for return (SFR) for petitioner for the years at issue pursuant to section 6020(b). The SFRs

³Because petitioner failed to respond to respondent's motion despite the Court's order directing him to do so, the Court could enter a decision against him for that reason alone. See Rule 121(d). We will nevertheless consider the motion on its merits.

⁴Petitioner has apparently been a member of ASCAP since 2000.

⁵Petitioner also did not file a Federal income tax return for 2006.

included as income the aforementioned CHA and ASCAP payments and dividends of \$72 and \$36 for 2007 and 2008, respectively, and allowed a standard deduction for a single filer and one exemption.

On November 19, 2012, respondent issued to petitioner two notices of deficiency--one for 2007 and another for 2008--based on the SFRs. The 2007 notice of deficiency determined that petitioner (1) had taxable income of \$47,035, (2) was liable for an income tax deficiency of \$14,602,⁶ and (3) was liable for additions to tax under sections 6651(a)(1) and (2) and 6654 of \$3,285, \$3,651 and \$665, respectively. The 2008 notice of deficiency determined that petitioner (1) had taxable income of \$7,767, (2) was liable for an income tax deficiency of \$2,537,⁷ and (3) was liable for additions to tax under section 6651(a)(1) and (2) of \$571 and \$507, respectively.

On December 6, 2012, petitioner timely petitioned this Court for redetermination of the deficiencies and the additions to tax. On January 22, 2013, pursuant to the Court's order for an amended petition and payment of the filing fee, petitioner filed an amended petition. In his amended petition petitioner alleged that he did not work to earn any income during the years at issue because he has been incarcerated since 2004. Petitioner did not assign any error as required by Rule 34(b)(4) to respondent's determinations that he was liable for the additions to tax. In subsequent filings with the Court, petitioner (1) appears to acknowledge that he had unreported income for 2007 of the type and in the amounts asserted by respondent in the 2007 notice of deficiency but claims to have offsetting expenses and (2) concedes that he is liable for the deficiency and the additions to tax for 2008.

On December 8, 2017, respondent filed a motion requesting that the Court issue an order to show cause why the facts and evidence as set forth in his proposed stipulation of facts should not be accepted as established for purposes of this case pursuant to Rule 91(f). On December 12, 2017, the Court granted

⁶Respondent also determined that petitioner's royalty income of \$45,454 was self-employment income, subject to an additional tax under section 1401. \$6,422 of the \$14,602 income tax deficiency represents this additional tax.

⁷Respondent also determined that petitioner's royalty income of \$12,446 was self-employment income, subject to an additional tax under section 1401. \$1,759 of the \$2,537 income tax deficiency represents this additional tax.

respondent's motion, ordering petitioner to respond to respondent's Rule 91(f) motion no later than January 26, 2018. On January 24, 2018, petitioner timely filed a response to the Court's December 12, 2017, order. On April 27, 2018, on the basis of its review of petitioner's response, the Court made its order absolute, and the facts and evidence set forth in respondent's proposed stipulation of facts were deemed established for purposes of this case.

Discussion

I. Summary Judgment

The purpose of summary judgment is to expedite litigation and avoid unnecessary and expensive trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted where the moving party shows through "the pleadings, * * * admissions, and any other acceptable materials, together with the affidavits and declarations, if any, * * * 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(b); see also Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The burden is on the moving party to demonstrate that there is no genuine issue as to any material fact; consequently, factual inferences will be viewed in a light most favorable to the party opposing summary judgment. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982). The nonmoving party may not rest upon the mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial. Rule 121(d); Sundstrand Corp. v. Commissioner, 98 T.C. at 520. On the basis of the record, we conclude that there is no genuine dispute as to any material fact. Consequently, we may render a decision as a matter of law.

II. Unreported Income

Section 61(a) defines gross income as "all income from whatever source derived", including "[r]ents", "[r]oyalties", and "[d]ividends". Royalty income is also considered self-employment income, see Jones v. Commissioner, T.C. Memo. 1998-354, 1998 Tax Ct. Memo LEXIS 358, at *14; Dacey v. Commissioner, T.C. Memo. 1992-187, 1992 Tax Ct. Memo LEXIS 212, at *20, and section 1401 imposes an additional tax on an individual's self-employment income for any taxable year. The record establishes, and after filing his petition petitioner apparently does not dispute, that he in fact received but failed to report on his Federal income tax returns (1) rental income of \$13,470 and \$5,115, (2) royalty

income of \$45,454 and \$12,446, and (3) dividend income of \$72 and \$36, for 2007 and 2008, respectively. As a matter of law, these items are includible in petitioner's taxable income for 2007 and 2008, respectively (and the royalty income is subject to self-employment tax for those years as well).

III. Additions to Tax

A. Section 6651(a)(1)

Section 6651 authorizes the imposition of an addition to tax for failure to timely file a Federal income tax return unless the taxpayer shows that such failure was due to reasonable cause and not due to willful neglect. United States v. Boyle, 469 U.S. 241, 245 (1985).

Petitioner did not file Federal income tax returns for the years at issue. Respondent's records show that no Federal income tax returns were filed in petitioner's name for the years at issue. In his filings with the Court, petitioner makes no argument whatsoever as to the application of the section 6651(a)(1) addition to tax, including that his failure to file his returns was due to reasonable cause and not due to willful neglect. Thus, as a matter of law, petitioner is liable for the additions to tax under section 6651(a)(1) for the years at issue.

B. Section 6654

Section 6654(a) imposes an addition to tax "in the case of any underpayment of estimated tax by an individual". The addition to tax is calculated with reference to four required installment payments of the individual's estimated tax liability. Sec. 6654(c) and (d). Each required installment payment is equal to 25% of the "required annual payment", which in turn, is equal to the lesser of (1) 90% of the tax shown on the individual's return for that year (or, if no return is filed, 90% of the individual's tax for such year) or (2) if the individual filed a return for the immediately preceding taxable year, 100% of the tax shown on the individual's return for the preceding taxable year. Sec. 6654(d)(1)(A) and (B). Respondent's records show that petitioner did not file a Federal income tax return for 2006 or 2007. Petitioner's "required annual payment" for 2007 thus equaled 90% of the tax due for that taxable year. The record also establishes that petitioner made no Federal tax payments for 2007. In his filings with the Court, petitioner makes no argument that any of the statutory exceptions under section 6654(e) applies; indeed, he makes no argument whatsoever as to the application of the section 6654

addition to tax. Thus, as a matter of law, petitioner is liable for the addition to tax under section 6654(a) for 2007.

Respondent having shown that there is no genuine dispute of material fact and that he is entitled to judgment as a matter of law, it is hereby

ORDERED that respondent's motion for summary judgment, filed September 25, 2018, is granted. It is further

ORDERED AND DECIDED that there are deficiencies in income tax due from petitioner for the 2007 and 2008 taxable years in the amounts of \$14,602 and \$2,537, respectively. It is further

ORDERED AND DECIDED that there are additions to tax under section 6651(a)(1) due from petitioner for the 2007 and 2008 taxable years in the amounts of \$3,285 and \$571, respectively. It is further

ORDERED AND DECIDED that there is an addition to tax under section 6654 due from petitioner for the 2007 taxable year in the amount of \$665. It is further

ORDERED AND DECIDED that there are no additions to tax due from petitioner under section 6651(a)(2) for the 2007 and 2008 taxable years.

**(Signed) Tamara W. Ashford
Judge**

ENTERED: **NOV 19 2018**