

UNITED STATES TAX COURT
WASHINGTON, DC 20217 PA

PERCY YOUNG,)
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Petitioner,)
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v.) Docket No. 5323-18 L.
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COMMISSIONER OF INTERNAL REVENUE,)
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Respondent)
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ORDER AND DECISION

This is a collection review case, commenced pursuant to section 6330(d)(1) and Rules 330 through 334, that involves a proposed levy to collect petitioner’s outstanding income tax liabilities for the taxable (calendar) years 2012 and 2013.¹ Presently pending before the Court is respondent’s Motion For Summary Judgment, filed February 26, 2019. Respondent has supported his motion with exhibits and by (1) a Memorandum Of Law and (2) the Declaration Of Kathy J. Masters with exhibits, both also filed February 26, 2019.²

On March 20, 2019, petitioner filed a Response to respondent’s motion, objecting to its granting. Thereafter, by Order of the Chief Judge dated April 2, 2019, this case was assigned to the undersigned for the purpose of addressing respondent’s motion.

¹ All section references are to the Internal Revenue Code of 1986, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

² Kathy J. Masters is the settlement officer in respondent’s Appeals Office who conducted the administrative (“collection due process” or “CDP”) hearing that preceded the commencement of the present judicial action.

Background

Petitioner resided in the State of Ohio at the time that the petition was filed with the Court.

A. Petitioner's Liabilities for 2012 and 2013

Petitioner did not file an income tax return for either 2012 or 2013. Accordingly, respondent invoked substitute-for-return procedures pursuant to section 6020(b) and thereafter issued a notice of deficiency for each year. See sec. 6212.

The notice of deficiency for 2012, which was dated October 26, 2015, was sent to petitioner by certified mail on October 22, 2015, and was received by him.³ Petitioner did not, however, commence an action for redetermination. See sec. 6213(a). Accordingly, in due course respondent assessed the determined deficiency in income tax and the additions to tax ("penalties") for failure to file, failure to pay, and failure to pay estimated tax, as well as statutory interest. See secs. 6651(a)(1) and (2), 6654(a), 6601. Notice and demand was made, see sec. 6303, but payment was not forthcoming.

The notice of deficiency for 2013, which was dated January 3, 2017, was sent to petitioner by certified mail on December 29, 2016.⁴ The United State Postal Service attempted to deliver the notice, but petitioner willfully declined to claim it, and it was eventually returned to respondent undelivered. Not surprisingly, petitioner did not commence an action for redetermination. Accordingly, in due course respondent assessed the determined deficiency in income tax and the additions to tax for failure to file, failure to pay, and failure to pay estimated tax, as well as statutory interest. Notice and demand was made, but payment was not forthcoming.

³ The notice of deficiency for 2012 was addressed to petitioner at his last known address, which is also petitioner's current address and the one that he has used throughout the present case.

⁴ The notice of deficiency for 2013 was also addressed to petitioner at his last known, and current, address. See n. 3, supra.

B. Proposed Levy and Administrative Hearing

On July 3, 2017, respondent sent petitioner a Notice Of Intent To Levy And Notice Of Your Right To A Hearing in respect of petitioner's unpaid liabilities for 2012 and 2013. See sec. 6330(a). In response petitioner filed a Request For A Collection Due Process Or Equivalent Hearing (Form 12153). In such request petitioner challenged the existence or amount of the underlying liabilities, writing "Need to file tax returns for 2012/2013 - deductions + expenses will offset amount due if any - won't have funds to file until 9-1-17". Also, on the line for "Collection Alternative", petitioner checked the box for "I Cannot Pay Balance".

During the course of the administrative hearing petitioner did not submit a tax return for either 2012 or 2013, nor did he submit a Form 433-A, Collection Information Statement, or other financial information that might have demonstrated an inability to pay. In addition, petitioner did not submit income tax returns for certain years subsequent to those in issue that he had failed to file.

On February 15, 2018, respondent's Appeals Office issued a Notice Of Determination Concerning Collection Action(s) sustaining the proposed levy. The Appeals Case Memorandum that accompanied the notice of determination stated, in part, that "[t]he Settlement Officer was unable to consider the proposed collection alternative [currently-not-collectible status] since you did not provide the requested information or participate in the CDP Hearing."

C. Judicial Proceeding

In response to the notice of determination petitioner filed an imperfect petition on March 15, 2018. In an amended petition, which was filed on May 14, 2018, petitioner admitted that he had yet to file a return for either 2012 or 2013, but that he expected to do so shortly. Petitioner did not otherwise challenge the notice of determination.

As previously indicated, after respondent filed his Motion For Summary Judgment, petitioner filed a Response on March 20, 2019. In his Response petitioner stated that "I mailed my tax returns today, 3-16-19, to the IRS." Petitioner attached to his Response copies of returns for 2012 and 2013 that were signed "3-16-19". Petitioner did not otherwise challenge the notice of determination.

Discussion

A. Summary Judgment

The purpose of summary judgment is to expedite litigation and avoid costly, time-consuming, and unnecessary trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Under Rule 121(b) the Court may grant summary judgment when there is no genuine issue or dispute as to any material fact and a decision may be rendered as a matter of law for the moving party. Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). In deciding whether to grant summary judgment, the Court construes factual materials and inferences drawn from them in the light most favorable to the nonmoving party. However, the nonmoving party may not rest on the mere allegations or denials of such party's pleadings but must instead must set forth specific facts showing that there is a genuine issue or dispute for trial. Rule 121(d); see Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

B. Standard of Review

Pursuant to section 6330(d)(1), the Court has jurisdiction to review the determination of the Commissioner's Appeals Office. See Murphy v. Commissioner, 125 T.C. 301, 308 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006). Where the validity of the underlying tax liability is properly at issue, the Court reviews the determination regarding the underlying tax liability de novo. Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). The Court reviews all other determinations for abuse of discretion. Sego v. Commissioner, 114 T.C. at 610; Goza v. Commissioner, 114 T.C. at 182. In reviewing for abuse of discretion, the Court will sustain the determination of the Appeals Office unless such determination is arbitrary, capricious, or without reasonable basis in fact or law. See, e.g., Freije v. Commissioner, 125 T.C. 14, 23 (2005); Ansley-Sheppard-Burgess Co. v. Commissioner, 104 T.C. 367, 371 (1995).

C. Underlying Liability

A taxpayer may challenge the existence or amount of the taxpayer's underlying tax liability only if the taxpayer did not receive a notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability. Sec. 6330(c)(2)(B). In a case such as the present one, the taxpayer's underlying tax liability includes the deficiency in income tax, additions to tax such

as those under sections 6651(a)(1) and (2) and 6654(a), and statutory interest. Katz v. Commissioner, 115 T.C. 329, 339 (2000).

In the present case petitioner received the notice of deficiency for 2012, and he would have received the notice of deficiency for 2013 had he claimed it, which he willfully declined to do. Under these circumstances, section 6330(c)(2)(B) serves to bar petitioner in the present case from challenging the existence or amount of his underlying liabilities for 2012 and 2013.

Admittedly, the possibility exists that petitioner's tax liability for each of the years in issue might have been less, and perhaps much less, had he timely filed returns for those years. Unfortunately, he did not. The possibility also exists that petitioner might have had a measure of success had he challenged respondent's deficiency determinations following the issuance of the notices of deficiency. Again unfortunately, he did not. Sadly, petitioner must now accept the consequences of his failure to timely file and his failure to dispute the notices of deficiency in the manner that the law affords.

D. Collection Alternatives

Regarding collection alternatives, including administrative relief afforded by currently-not-collectible status, it is generally incumbent on the taxpayer to provide requested financial information in order to permit evaluation of ability to pay. See, e.g., secs. 6159, 7122; Kindred v. Commissioner, 454 F.3d 688, 697-698 (7th Cir. 2006); Olsen v. United States, 414 F.3d 144, 151 (1st Cir. 2005); Murphy v. Commissioner, 125 T.C. 301, 315 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Mattson v. Commissioner, 508 Fed. App'x 653 (9th Cir. 2013); Wright v. Commissioner, T.C. Memo. 2012-24, *3. Similarly, IRS guidelines with respect to collection alternatives direct that the taxpayer must be in current compliance with filing and estimated tax payment obligations. E.g., McLaine v. Commissioner, 138 T.C. 228, 243 (2012); Giamelli v. Commissioner, 129 T.C. at 115-116; Taylor v. Commissioner, T.C. Memo. 2009-27.

In the present case petitioner checked the box for "I Cannot Pay Balance" on the line for "Collection Alternative" on Form 12153. However, assuming that petitioner was interested in pursuing a collection alternative (including currently-not-collectible status), the record demonstrates that he failed during the pendency of the administrative hearing process to submit requested financial materials that might have established his qualification for such. Moreover, during the pendency of that process petitioner failed to come into filing compliance for years

subsequent to those in issue. Under these circumstances there was no abuse of discretion on the part of respondent's Appeals Office in not granting petitioner a collection alternative, specifically including currently-not-collectible status. See, e.g., Giamelli v. Commissioner, 129 T.C. 207, 115-116 (2007); Taylor v. Commissioner, T.C. Memo. 2009-27; Roman v. Commissioner, T.C. Memo. 2004-20.

Conclusion

Drawing all factual inferences against respondent, the Court concludes that there are no genuine issues or disputes of material fact in this case, that respondent's determination to proceed with collection was not an abuse of discretion, and that respondent is entitled to judgment as a matter of law.

In view of the foregoing, it is hereby

ORDERED that respondent's Motion For Summary Judgment, filed February 26, 2019, is granted. It is further

ORDERED that respondent may proceed with the proposed collection action (levy) in respect of petitioner's outstanding income tax liabilities for the taxable (calendar) years 2012 and 2013, as determined by respondent's Appeals Office in its Notice Of Determination Concerning Collection Action(s) dated February 15, 2018, upon which notice this case is based.

(Signed) Robert N. Armen
Special Trial Judge

Entered: **APR 09 2019**