UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

ALEXANDER H. HYATT,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 17872-18L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER AND DECISION

The Petition in this case was filed in response to a notice of determination sustaining a proposed levy to collect petitioner's unpaid Federal income tax liability for 2012. On July 9, 2019, respondent filed a Motion for Summary Judgment and a Declaration of Valencia Turner in support thereof (collectively, the Motion).[1] In an Order issued on the same date, the Court directed petitioner to file a response to the Motion by August 9, 2019, and warned him that the frivolous arguments raised in the Petition could result in the imposition of a section 6673 penalty of up to $25,000.[2] Petitioner failed to file a response, and he has neither withdrawn his frivolous positions nor raised any new, nonfrivolous arguments.

Summary judgment "is intended 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 there is no genuine issue of material fact and a decision may be rendered as a matter of law. Rule 121(a), (b). The moving party bears the burden of proving that there is no genuine issue of material fact, and factual inferences are viewed in a light most favorable to the nonmoving party. Craig v. Commissioner, 119 T.C. 252, 260 (2002); Dahlstrom v.

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[1]On August 26, 2019, respondent also filed a Supplemental Declaration of Valencia Turner in support of the Motion.

[2]Unless 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 of 1986, as amended.

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Commissioner, 85 T.C. 812, 821 (1985). The party opposing summary judgment must set forth specific facts showing that a genuine question of material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988).

Where, as here, the nonmoving party has failed to respond to a motion for summary judgment as required under Rule 121(b) and the Court's order, a decision may be entered against the nonmoving party. Rule 121(d) (last sentence). We accordingly will enter a decision in respondent's favor on this ground.

In the alternative, even if respondent's Motion is considered on the merits, he is also entitled to a decision in his favor, as discussed hereinafter.

The Secretary of the Treasury has the power to levy upon property and property rights of a taxpayer who fails to pay a tax within 10 days after notice and demand for payment thereof. Sec. 6331(a). Section 6330 provides, however, that no levy may be made unless the Secretary first notifies the taxpayer of the right to a hearing before the Internal Revenue Service (IRS) Office of Appeals (Appeals). Sec. 6330(a), (b). At the hearing, the taxpayer may raise any relevant issue relating to the unpaid tax or the proposed levy, including challenges to the appropriateness of collection actions and offers of collection alternatives. Sec. 6330(c)(2)(A); Sego v. Commissioner, 114 T.C. 604, 608-609 (2000); Goza v. Commissioner, 114 T.C. 176, 180 (2000). A taxpayer may contest the existence or amount of the underlying tax liability if the taxpayer did not receive a statutory notice of deficiency for the liability or did not otherwise have an earlier opportunity to dispute it. Sec. 6330(c)(2)(B); see also Sego v. Commissioner, 114 T.C. at 609. Following the hearing, Appeals must make a determination whether the Commissioner may proceed with the proposed collection action, taking into consideration (1) whether the requirements of applicable law and administrative procedure have been met, (2) any relevant issues raised by the taxpayer, and (3) whether the proposed collection action appropriately balances the need for efficient collection of taxes with the taxpayer's legitimate concern that the collection action be no more intrusive than necessary. Sec. 6330(c)(3). We have jurisdiction to review the Appeals determination. Sec. 6330(d)(1).

Where the validity of the underlying tax liability is not properly at issue, we review the Commissioner's administrative determination for abuse of discretion. Sego v. Commissioner, 114 T.C. at 610; Goza v. Commissioner, 114 T.C. at 182. An abuse of discretion occurs if the determination by Appeals is arbitrary, capricious, or without sound basis in fact or law. See Murphy v. Commissioner,

125 T.C. 301, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Freije v. Commissioner, 125 T.C. 14, 23 (2005). "It is not an abuse of discretion for an appeals officer to sustain a levy and not consider any collection alternatives when the taxpayer has proposed none." Dinino v. Commissioner, T.C. Memo. 2009-284, slip op. at 21. Additionally, Appeals officers need not consider frivolous arguments. Harris v. Commissioner, T.C. Memo. 2012-275, at *9.

Petitioner has not disputed the following matters respondent alleges in his Motion, which respondent has substantiated with relevant documents from the administrative file. In 2015, petitioner received a notice of deficiency for the 2012 taxable year, determining an income tax deficiency of $39,414 for that year. In response to the notice of deficiency, petitioner filed an imperfect petition in this Court. He then failed to comply with an order requiring him to file an amended petition and pay the filing fee, and the petition was dismissed for lack of jurisdiction.

In 2017, respondent sent petitioner a notice of intent to levy in order to collect the unpaid 2012 tax liability. To challenge the proposed levy, petitioner timely submitted a request for a Collection Due Process (CDP) hearing before Appeals. Petitioner explained that the reasons he requested the hearing were that "[n]o contract exists between [the] parties" and that the tax was fraudulently assessed. In various attachments to the hearing request, petitioner stated, inter alia, his objection to the United States financial system, his objection to his status as a citizen of the United States, his objection to the Social Security system, and his desire to rescind his signature on all IRS Forms 1040 that he had filed because he no longer believes he is legally required to file such forms.

The Appeals settlement officer (SO) assigned to conduct the CDP hearing verified that all pre-levy procedural and administrative requirements had been met, including proper assessment of the tax and mailing of notice and demand for payment. During a telephone conference in March of 2018, the SO informed petitioner that he could not challenge the underlying tax liability because he previously had the opportunity to do so when he received the notice of deficiency for 2012 in 2015 and petitioned the Tax Court. Petitioner told the SO that he was not seeking a collection alternative. Several months later, after the SO unsuccessfully attempted to follow up with petitioner to give him another chance to discuss collection alternatives, Appeals issued a notice of determination sustaining the proposed levy. Because petitioner made no effort to pursue a collection alternative, the SO concluded that the proposed levy adequately

balanced the need for efficient collection of taxes with petitioner's legitimate concern that the collection action be no more intrusive than necessary.

Petitioner's submissions to the Court do not call any of these facts into question. The Petition merely asserts that there is no legal authority--statutory, regulatory, or otherwise--that authorizes the notice of deficiency, that "respondent fraudulently manipulated its internal systems", and that no regulation imposes a tax liability on wages. Petitioner also attached documents to the Petition identical to those he submitted with his CDP hearing request, repeating his objections to the prevailing financial system, his status as a citizen, and the Social Security system, and purporting to rescind his signature on all Forms 1040 that he had previously filed. Further, petitioner has failed to respond to the Motion as directed. The Court therefore concludes that there are no disputed issues of material fact. See Rule 121(d).

Petitioner had the opportunity to challenge the underlying tax liability for 2012 when he petitioned this Court in 2015. He allowed that opportunity to pass, and he therefore was not entitled to challenge the underlying liability in the CDP hearing at issue in this case. Accordingly, we review Appeals' determination for abuse of discretion.

During the CDP hearing, the SO verified that respondent had satisfied all requirements of applicable law or administrative procedure before issuing his levy notice. The issues petitioner raised in his hearing request generally appear to have been intended as challenges to the underlying liability (which we have held petitioner could not properly raise in the CDP hearing), and were in any event frivolous and irrelevant. See Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986) (a position asserted on a tax return or in Tax Court is frivolous "if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law"). The SO consequently was not required to consider petitioner's arguments. Furthermore, petitioner declined to discuss collection alternatives with the SO, leading the SO to conclude that no alternative collection action would better balance the need to efficiently collect taxes with petitioner's interest in limiting the intrusiveness of the collection action. The SO thus complied with all section 6330(c) requirements, and the Appeals determination sustaining the proposed levy was not an abuse of discretion.

To the extent petitioner has raised any new arguments in his Petition that are not intended as a challenge to the underlying tax liability, we conclude that they are frivolous and without any basis in law or fact. For example, petitioner has

alleged no factual basis for his contention that respondent manipulated his internal systems. And it is clear that notices of deficiency are authorized under section 6212 and that wages are income under section 61. We will not address petitioner's arguments further "with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." See Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984).

Because the Appeals determination was not an abuse of discretion and petitioner's arguments are groundless, respondent is entitled to judgment as a matter of law. As we have discussed, petitioner did not respond to the Motion, and his Petition does not raise a genuine dispute as to any material fact. Moreover, Rule 121(d) provides that a decision may be entered against a party who rests on his pleadings after the opposing party has filed a properly supported motion for summary judgment. The Court therefore concludes that summary judgment is appropriate.

Finally, section 6673(a)(1) authorizes the Tax Court to impose a penalty not exceeding $25,000 whenever it appears that proceedings before it have been instituted or maintained by the taxpayer primarily for delay, or the taxpayer's position in such proceeding is frivolous or groundless. We have noted that, "[g]iven the public policy interest in deterring the abuse and waste of judicial resources, the authority of the Court to impose this penalty and in what amount is broad." Smith v. Commissioner, T.C. Memo. 2019-111, at *13 (citing Leyshon v. Commissioner, T.C. Memo. 2015-104, at *24, aff'd, 649 F. App'x 299 (4th Cir. 2016)).

This Court has imposed section 6673 penalties on petitioner for maintaining similar frivolous positions in four prior cases: $5,000 in docket number 7221-07L; $7,500 in docket number 26157-08; $10,000 in docket number 8771-08L; and the maximum penalty of $25,000 in docket number 22711-09L. Petitioner has not been deterred. In this case he has yet again advanced frivolous arguments that serve no purpose other than to protest the tax system and delay collection of the tax he owes, and which waste both the Court's and respondent's resources. We will therefore once again impose on petitioner the maximum penalty of $25,000.

In view of the foregoing, it is

ORDERED that respondent's Motion for Summary Judgment, filed July 9, 2019, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action for the 2012 taxable year as determined in the notice of determination dated August 3, 2018, upon which this case is based. It is further

ORDERED AND DECIDED that petitioner shall pay to the United States a penalty under section 6673(a)(1) of $25,000.

(Signed) Joseph H. Gale
Judge

ENTERED: **SEP 04 2019**