

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

ANTHONY MCBRYDE,)
)
 Petitioner,)
)
 v.) Docket No. 4820-19 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER AND DECISION

Petitioner timely filed a petition in this case on March 11, 2019. Petitioner seeks review of a Notice of Determination Concerning Collection Actions Under Section 6320 or 6330 (notice of determination) dated February 6, 2019.¹ The notice of determination sustained a proposed levy with respect to petitioner’s unpaid income tax liabilities for 2009, 2010, and 2012 and petitioner’s unpaid gift tax liabilities for tax years 2014, 2015, and 2016, and sustained the filing of a Notice of Federal Tax Lien for petitioner’s unpaid gift tax liabilities for tax years 2014, 2015, and 2016.

On December 19, 2019, respondent filed a Motion for Summary Judgment, supported by a Declaration of Settlement Officer Bart A. Hill (respondent’s motion for summary judgment) pursuant to Rule 121. By Order dated December 23, 2019, the Court directed petitioner to file a response to respondent’s motion for summary judgment on or before January 13, 2020. On December 30, 2019, petitioner filed an objection to respondent’s motion for summary judgment. On January 7, 2020, petitioner filed his own motion for summary judgment, supported by an Affidavit of Facts in Support of Petitioner’s Counter Motion for Summary Judgment signed by petitioner (petitioner’s motion for summary judgment).

¹Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

SERVED Jan 16 2020

On January 9, 2020, respondent's motion for summary judgment and petitioner's motion for summary judgment were assigned to the undersigned for disposition.

Upon review of the record, the Court concludes that there are not any genuine issues of material fact and that respondent is entitled to judgment as a matter of law. Accordingly, the Court will grant respondent's motion for summary judgment and deny petitioner's motion for summary judgment.

Background

The following facts are established by the record on respondent's motion for summary judgment and petitioner's motion for summary judgment. Petitioner resided in Texas at the time the petition was filed.

A. Income Tax Returns

On May 5, 2010, petitioner filed an individual income tax return for 2009 that reported a balance due after application of refundable credits of \$5,306. Petitioner did not make any payments toward that liability. On June 14, 2010, the Internal Revenue Service (IRS)² assessed the reported balance less the refundable credit of \$5,306, an addition to tax for late filing under section 6651(a)(1) of \$238.77, an addition to tax for late payment under section 6651(a)(2) of \$53.06, an addition to tax for underpayment of estimated tax under section 6654 of \$127.04, and interest of \$36.58. The IRS mailed to petitioner a notice and demand letter for assessment dated June 14, 2010. On November 28, 2011, the IRS assessed an additional addition to tax for late payment under section 6651(a)(2) of \$477.54 and on the same day mailed to petitioner a notice and demand letter for assessment.

For 2010 and 2012 petitioner did not file an individual income tax return. For 2010, the IRS prepared a substitute for return (SFR) and sent to petitioner by certified mail to what respondent then determined was petitioner's last known address a Notice of Deficiency dated February 18, 2014. Petitioner did not file a petition with the Court with respect to the notice of deficiency and the IRS

²The Court uses the term "IRS" to refer to administrative actions taken outside of these proceedings. The Court uses the term "respondent" to refer to the Commissioner of Internal Revenue, who is the head of the IRS and is respondent in this case, and to refer to actions taken in connection with this case.

subsequently assessed a deficiency on June 30, 2014, of income tax of \$4,788, an addition to tax for late payment under section 6651(a)(2) of \$855.66, an addition to tax for late filing under section 6651(a)(1) of \$987.30, interest of \$570.35, and credited petitioner's account for a refundable credit of \$400. On the same day the IRS mailed to petitioner a notice and demand letter for assessment. Petitioner did not make any payments toward that liability.

For 2012, the IRS prepared an SFR and sent to petitioner by certified mail to what respondent then determined was petitioner's last known address a notice of deficiency dated June 22, 2015. Petitioner did not file a petition with the Court with respect to the notice of deficiency and the IRS subsequently assessed a deficiency on November 2, 2015, of \$5,449 of income tax, an addition to tax for late filing under section 6651(a)(1) of \$1,226.03, an addition to tax for late payment under section 6651(a)(2) of \$844.59, and interest of \$530.80. On the same day the IRS mailed to petitioner a notice and demand letter for assessment. Petitioner did not make any payments toward that liability.

B. Gift Tax Returns

On June 8, 2017, petitioner filed gift tax returns, Forms 709, United States Gift (and Generation Skipping Transfer) Tax Return, for 2014, 2015, and 2016 showing the balances due of \$4,328, \$4,893 and \$4,853, respectively. The IRS issued math error notices³ correcting the taxes due for the gifts reported on the gift tax returns and on July 17, 2017, the IRS assessed the following gift tax, additions to tax, and interest and on the same day mailed to petitioner a notice and demand letter for assessment:

³A math error notice is issued to a taxpayer when, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due. Sec. 6213(b)(1). Unless the taxpayer files with the Secretary within 60 days of the notice a request for abatement of the additional assessment, an assessment of tax will be made on the basis of what would have been the correct amount of tax, but for the mathematical or clerical error. *Id.* A math error notice is not considered a notice of deficiency and the taxpayer does not have the right to file a petition with the Tax Court based on such a notice.

Year	Gift Tax	Late Filing Addition to Tax	Late Payment Addition to Tax	Interest
2014 ⁴	\$30,799.00	\$6,929.77	\$605.92	\$3,165.95
2015	37,342.00	8,401.95	391.44	2,350.69
2016	36,827.00	3,314.43	97.06	411.19

Petitioner did not make any payments with respect to his 2014, 2015, or 2016 gift tax liabilities.

C. Collection Due Process Hearing

The IRS issued a Notice of Intent to Levy and Notice of Rights to a Hearing dated November 29, 2017, with respect to petitioner's unpaid income tax liabilities for 2009, 2010, and 2012. The IRS issued a Notice of Intent to Levy and Notice of Rights to a Hearing dated November 29, 2017, with respect to petitioner's unpaid gift tax liabilities for 2014, 2015, and 2016. The IRS filed a Notice of Federal Tax Lien and mailed to petitioner a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6230 with respect to petitioner's unpaid gift tax liabilities for 2014, 2015, and 2016 on December 5, 2017.

Petitioner timely filed a request for a collection due process (CDP) hearing with respect to the two notices of intent to levy and the notice of Federal tax lien filing. The essence of petitioner's basis for requesting a CDP hearing was that he disputed the underlying tax liabilities by asserting that there "is the lack of any statute which clearly and unequivocally makes * * * [him] liable for, or subject to, the federal income tax imposed * * * on [i]ndividuals." Petitioner concluded that "any attempts to collect the alleged assessment in the instant dispute * * * must be considered to be knowing and willful violations of * * * [his] right to due process." Petitioner also asserted that the IRS had not sent to him a notice of deficiency with respect to either 2010 or 2012.

On June 1, 2018, petitioner filed with the IRS an Offer in Compromise offering \$42,000 to settle his outstanding tax liabilities. Settlement Officer Bart A. Hill (SO Hill) sent petitioner a letter dated June 21, 2018, informing petitioner that

⁴For 2014, the IRS also assessed \$63 for fees and collection costs.

SO Hill had been assigned his CDP hearing request and that he had scheduled a telephone CDP hearing for July 17, 2018. On that day petitioner's representative, James Yandle, did not answer the phone and SO Hill was unable to leave a voice mail message. All future attempts to contact Mr. Yandle were unsuccessful.

By letter dated November 9, 2018, the IRS unit that considered petitioner's offer in compromise informed him that based on the IRS' review of his current financial information it preliminarily rejected the offer but that he could increase the offer and his case would be forwarded to SO Hill to make a final determination on the offer. The IRS sent a copy of that letter to Mr. Yandle, petitioner's representative.

By letter dated November 28, 2018, SO Hill notified petitioner that he reviewed the computations made by the IRS unit that had considered petitioner's offer in compromise and that such computations showed that petitioner could increase his offer to \$62,464 of which petitioner had already paid \$10,548 and the remaining amount could be paid with an initial payment of \$2,888 and 17 monthly payments of \$2,884. SO Hill also indicated that he agreed with the proposed revised offer and gave petitioner until December 12, 2018, to advise SO Hill whether petitioner accepted the revised offer terms. Additionally, SO Hill indicated in that letter that if petitioner did not respond to him by December 12, 2018, SO Hill would issue a notice of determination rejecting the offer in compromise.

On December 3, 2018, petitioner left SO Hill a voice mail message indicating that he wished to respond to his letter. However, on December 12, 2018, SO Hill determined that petitioner had pending another income tax liability for 2015 which meant that the offer in compromise could not be accepted. SO Hill left petitioner a voice mail message informing him that unless the 2015 tax liability is assessed immediately, SO Hill would have to issue a notice of determination rejecting the offer.

SO Hill verified that he did not have any prior involvement with petitioner with respect to the income tax and gift tax liabilities for the years in issue. SO Hill also verified that all legal and procedural requirements concerning the income tax and gift tax assessments were followed and that the proposed levies and the filed Federal tax lien balanced the need for efficient collection of the income and gift taxes in issue with the concern that the collection be no more intrusive than necessary.

Discussion

A. Summary Judgment

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 not any genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(b). The moving party bears the burden of proving that there is not any genuine dispute as to any material fact, and the factual inferences will be read in a manner most favorable to the party opposing summary judgment. Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). When a motion for summary judgment is made and properly supported, the adverse party may not rest upon mere allegations or denials of the pleadings, but must set forth specific facts showing that there is a genuine dispute for trial. Rule 121(d).

Petitioner in his objection to respondent's motion for summary judgment and in petitioner's motion for summary judgment alleges that (1) he is a man, not the tax account identified in the notice of determination and that respondent lacks authority to seek collection by levying the income and gift taxes in issue; (2) that there are a minimum of three different Anthony McBrydes involved in the determination, two of which have different tax ID numbers and the other "appears to be an account under the care and control of the Social Security Administration, and not [p]etitioner"; (3) the IRS' determination lacks full disclosure and is dishonest; and (4) the IRS' determination is based on errors and mistakes and is based on "false presumption". During the CDP hearing process petitioner asserted that the IRS had not issued notices of deficiency for 2010 or 2012. However, attached to respondent's declaration by SO Hill is proof that the IRS mailed by certified mail a notice of deficiency to what the IRS then determined was petitioner's last known address for both 2010 and 2012. Petitioner has not asserted that the address to which the notices of deficiency were mailed was not his last known address. Further, petitioner does not set forth specific facts to support his other allegations.

Petitioner's arguments have been repeatedly rejected by this and other courts. See e.g., Garber v. Commissioner, T.C. Memo. 2012-47, aff'd, 500 Fed. Appx. 540 (7th Cir. 2013); Brennan v. Commissioner, T.C. Memo. 2009-77; Fox v. Commissioner, T.C. Memo. 1991-240, aff'd, 969 F. 2d 951 (10th Cir. 1992). "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have

some colorable merit.” Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984); see also Casper v. Commissioner, 805 F.2d 902 (10th Cir. 1986), aff’g T.C. Memo. 1985-154.

The Court concludes that respondent has met his burden of proving that there is not any genuine dispute as to any material fact and that he is entitled to a decision as a matter of law, and that petitioner has not met his burden of proving that there is any genuine dispute as to any material fact or that he is entitled to a decision as a matter of law.

The Court takes this opportunity to inform petitioner that the Court may impose a penalty up to \$25,000 if a taxpayer institutes or maintains a frivolous or groundless position or institutes or maintains a proceeding primarily for delay. Petitioner is warned that should he continue to pursue frivolous or groundless arguments before the Court, or if he institutes or maintains a case primarily for delay in the future, he may be subject to penalties under section 6673 up to the amount of \$25,000. Premises considered, it is

ORDERED that petitioner’s motion for summary judgment filed January 7, 2020, is denied. It is further

ORDERED that respondent’s motion for summary judgment filed December 19, 2019, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the proposed collection action (levies) in respect to petitioner’s outstanding income tax liabilities for 2009, 2010, and 2012 and unpaid gift tax liabilities for 2014, 2015, and 2016, and the proposed collection action (lien filing) with respect to petitioner’s outstanding gift tax liabilities for 2014, 2015, and 2016, as determined in the notice of determination dated February 6, 2019, upon which this case is based.

**(Signed) Diana L. Leyden
Special Trial Judge**

ENTERED **JAN 16 2020**