

UNITED STATES TAX COURT

WASHINGTON, DC 20217

DANIEL TAYLOR JENKINS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 20217-03L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER AND DECISION

Respondent has moved for summary judgment and for imposition of a penalty under section 6673¹ (the motion). Petitioner objects. For the reasons that follow, we shall grant the motion for summary judgment and enter decision for respondent. We shall also impose a penalty against petitioner under section 6673 in the amount of \$5,000.

This case is before the Court to review a determination (the determination) made by respondent's Appeals Office (Appeals) that respondent may proceed to collect by levy the unpaid portion of the income tax petitioner reported on his calendar year 2001 Federal income tax return (the unpaid tax) together with interest and certain statutory additions to the tax. We review the determination pursuant to section 6330(d)(1). Petitioner claims that Appeals erred in refusing to allow him to follow his conscience and refrain from paying the unpaid tax until such time as he may direct that the tax be used to fund only non-military expenditures. Respondent moves for summary judgment in his favor on the ground that petitioner has no right to rely on his own conscience as a basis for not paying tax. Respondent argues that there is no genuine issue of material fact for trial and that a decision may be rendered as a matter of law.

Rule 121 provides for summary judgment. Summary judgment may be granted with respect to all or any part of the legal

¹ Unless otherwise indicated, 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.

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issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b). When a motion for summary judgment is made and properly supported, the adverse party may not rest on mere allegations or denials of the pleadings but must set forth specific facts showing that there is a genuine issue for trial. Rule 121(d).

We are satisfied that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. For the reasons that follow, we shall grant the motion.

Background

We draw the following facts from the pleadings, the Declaration of Bruce E. Conte, a settlement officer employed by respondent, in support of respondent's motion (the Conte Declaration) and the exhibits thereto, and "Petitioner's Response in Opposition to Respondent's Motion" (the response). We believe the following facts to be undisputed and so find for purposes of this order and decision.

Petitioner timely filed his 2001 Federal income tax return, reporting a tax due of \$4,118.58, but enclosing only a payment in the amount of \$1,842.58. A letter attached to the return states that the balance, \$2,276.00, had been "put in escrow pending the opportunity to direct tax dollars entirely to non-military government expenditures."

On May 16, 2003, after respondent notified petitioner of his obligation to pay the balance due, penalties, and interest, respondent sent petitioner a Final Notice of Intent to Levy and Notice of Your Right to a Hearing. In response, on June 12, 2003, petitioner timely submitted to Appeals a Request for Collection Due Process Hearing (the request). The request stated only that "[t]he original \$2276.00 was escrowed and available since mid-April of 2002."

A telephonic collection due process hearing was held on October 8, 2003 (the hearing). At the hearing, petitioner raised two issues: (1) that the proposed levy would exceed the amount listed in Publication 1494 and (2) that petitioner desired the ability to direct the taxes he pays entirely to non-military government expenditures. As to the first issue, the settlement officer conducting the hearing for Appeals (the settlement

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officer) explained that Publication 1494 pertains only to levies on wages, salary, and other income and therefore did not limit respondent's ability to levy on other property. The settlement officer also advised petitioner that failure or refusal to comply with tax laws, even if such failure or refusal is based on moral, religious, political, or similar grounds, could not justify forestalling or averting the proposed levy action. Additionally, petitioner and the settlement officer discussed the fact that penalties might be assessed against petitioner if his position were deemed frivolous or groundless. Petitioner did not challenge the amount or existence of underlying liability he reported on his return. No further issues were raised, nor were any alternative collection actions suggested. The hearing ended with the settlement officer disclosing to petitioner that the proposed levy action would likely be upheld, and petitioner stated that he understood.

On October 23, 2003, Appeals made the determination, sustaining the proposed levy action. Attached to the determination is an explanation of Appeals' action, which, among other things, sets forth relevant facts, confirms that Appeals verified that the requirements of applicable law and administrative procedures had been met, addresses the issues raised by petitioner, and concludes that the proposed collection action balances the need for efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Discussion

I. Collection Due Process

If any person liable for Federal tax liability neglects or refuses to make payment within 10 days of notice and demand, the Commissioner is authorized to collect the tax by levy on that person's property. See sec. 6331(a). As a general rule, at least 30 days before taking such action, the Commissioner must provide the person with a written final notice of intent to levy that describes, among other things, the administrative appeals available to the person. See sec. 6331(d).

Upon request, the person is entitled to an administrative review hearing before Appeals (a collection due process hearing). Sec. 6330(b)(1). The Appeals officer conducting the collection due process hearing must verify that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(c)(1). Section 6330(c) prescribes the relevant matters that

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a person may raise at the collection due process hearing, including spousal defenses, the appropriateness of respondent's proposed collection action, and possible alternative means of collection. A taxpayer may contest the existence or amount of the underlying tax liability at a collection due process hearing only if the taxpayer did not receive a statutory notice of deficiency with respect to the underlying tax liability or did not otherwise have an opportunity to dispute that liability. Sec. 6330(c)(2)(B).

Following the collection due process hearing, the Appeals officer must determine whether the collection action is to proceed, taking into account the verification the Appeals officer has made, the issues raised by the taxpayer at the hearing, and whether the collection action, "balances the need for the efficient collection of taxes with the legitimate concern of the * * * [taxpayer] that any collection action be no more intrusive than necessary." Sec. 6330(c)(3). We have jurisdiction to review such determinations where we have jurisdiction over the type of tax involved in the case. Sec. 6330(d)(1)(A); see Iannone v. Commissioner, 122 T.C. 287, 290 (2004).

II. Petitioner's Request for Relief

While petitioner claims that there are genuine issues of fact for trial, he frames the issue before the Court as follows:

The issue before this Court is the constitutionality of Title 26 of the U.S. Code [the Internal Revenue Code], or any particular section thereof, to the extent it is being applied to compel persons to violate their protected liberties and rights of individual conscience, as written or as currently administered by the Internal Revenue Service. * * *

We see no issue of fact and dispose summarily of petitioner's claim that the Constitution allows him to retain the unpaid tax in an escrow account until such time as it "can be directed to non-military expenditures." That claim has no merit. It is representative of a class of arguments that have been universally rejected by this and other courts. See, e.g., United States v. Lee, 455 U.S. 252, 260 (1982) ("The tax system could not function if [religious] denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief."); Tingle v. Commissioner, 73 T.C. 816 (1980) (The Ninth Amendment was not intended to abridge the specific power of Congress to lay and

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collect taxes from whatever source derived and does not protect acts of conscience which contest the appropriation of the revenue.)

Appeals committed no error in rejecting petitioner's claim.

III. Section 6673 Penalty

Respondent urges this court to impose a section 6673 penalty upon petitioner. Section 6673(a)(1) permits the Court to impose a penalty on a taxpayer, not to exceed \$25,000, if the Court finds: (1) that the proceedings brought by the taxpayer were brought primarily for delay; (2) that the taxpayer's position is frivolous or groundless; or (3) that the taxpayer did not reasonably pursue available administrative remedies. Section 6673(a)(1) is applicable to collection due process proceedings. Pierson v. Commissioner, 115 T.C. 576 (2000).

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." Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986); see also Grasselli v. Commissioner, T.C. Memo. 1994-581 (quoting Coleman). A taxpayer's position is frivolous if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law. E.g., Nis Family Trust v. Commissioner, 115 T.C. 523, 544 (2000). We need not find specific damages to invoke section 6673(a)(1); rather, that section is a penalty provision, intended to deter and penalize frivolous claims and positions in proceedings before the Tax Court. See Bagby v. Commissioner, 102 T.C. 596, 613-614 (1994).

We believe that petitioner's position is frivolous under the definition set forth above. Moreover, this is not the first time that petitioner has appeared before this Court, nor is it the first time he has adopted the position he has in this case. In Jenkins v. Commissioner, T.C. Summary Opinion 1987-322, petitioner claimed a credit on his 1985 income tax return based upon his conscientious opposition to military expenditures. Petitioner indicated that the amount that respondent asserted he owed would be held in escrow. Id. This court disallowed the credit, but it declined to impose a penalty under section 6673. Id.

We believe a penalty under section 6673 is now appropriate. Not only did petitioner's prior proceedings before this court serve to warn him that his arguments were without merit, the

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settlement officer who conducted the hearing also reminded petitioner of the possible sanctions he might face by petitioning this court. Accordingly, because we deem petitioner's position to be frivolous, we impose upon petitioner a penalty of \$5,000.

IV. Conclusion

Petitioner has failed to show any error in Appeals' determination to proceed to collect by levy the unpaid tax. Further, petitioner's position is deemed to be frivolous for purposes of section 6673(a)(1)(B), and this court shall impose a penalty upon him in the amount of \$5,000.

For the foregoing reasons, it is hereby

ORDERED that petitioner's motion for continuance filed February 22, 2005, is deemed moot. It is further

ORDERED that this case is stricken from the March 14, 2005, New York, New York, Trial Session of the Court. It is further

ORDERED that respondent's motion for summary judgment is granted. It is further

ORDERED that petitioner shall pay to the United States a penalty in the amount of \$5,000. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action for the taxable year 2001 as determined in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated October 23, 2003, upon which this case is based.

(Signed) James S. Halpern

James S. Halpern
Judge

ENTERED: MAR - 3 2005