



United States Tax Court

Washington, DC 20217

Rita B. Barrett

Petitioner

v.

Commissioner of Internal Revenue

Respondent

Docket No. 11899-20L

ORDER AND DECISION

This is a collection review case, filed pursuant to section 6330(d)(1), that involves a proposed levy action to collect petitioner's outstanding income tax liabilities for the taxable years 2016 and 2017. Pending before the Court is respondent's Motion For Summary Judgment, filed March 11, 2021. Respondent concurrently filed a declaration of the settlement officer (SO) who conducted petitioner's collection due process (CDP) hearing. Petitioner objects to the granting of respondent's motion.

At the time that the petition was filed in this case, petitioner resided in the State of California.

Background

Respondent issued a Notice Of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 (Notice Of Determination) dated September 15, 2020, with respect to taxable years 2016 and 2017.

A. Petitioner's Tax Liabilities for 2016 and 2017

Petitioner timely filed Federal income tax returns for 2016 and 2017, reflecting a tax due in each year but without remittance. Respondent assessed the reported tax liability, together with (1) additions to tax for failure to pay tax and for failure to pay estimated tax and (2) statutory interest. Respondent then sent petitioner a statutory notice of balance due, i.e., notice and demand for payment.

On June 3, 2019, respondent sent petitioner a Notice CP90, i.e., notice of intent to levy and notice of right to a hearing. In response, petitioner timely filed with respondent a Form 12153, Request For A Collection Due Process Or Equivalent Hearing. The Form 12153 did not dispute taxable years 2016 and 2017, but instead disputed taxable year 1976. Accordingly we turn to that year and describe three prior cases prosecuted by petitioner in this Court.

B. Prior Litigation Involving 1976

In 1984 petitioner and her late husband Benjamin Barrett commenced a case in this Court at Docket No. 3101-84 challenging a notice of deficiency that had been issued to them for 1976. The notice determined a deficiency in the couple's income tax attributable to a tax shelter involving coal leases. Petitioner and Mr. Barrett were represented by counsel. In February 1986 the Court entered a stipulated decision in which the parties agreed that petitioners were liable for a deficiency in income tax in the amount of \$79,542 for 1976 together with interest as provided by law. No appeal was taken, and the Court's decision became final in due course. Petitioner and her late husband paid the deficiency in tax and the statutory interest that were assessed pursuant to the stipulated decision.

Pursuant to section 6404(e), petitioner twice requested abatement of interest with respect to the interest accrued on the 1976 income tax liability. Respondent issued a notice of determination denying petitioner's request in each instance. Petitioner subsequently litigated each claim for abatement of interest before this Court at Dkt. Nos. 22940-07 and 26207-15. In each case, the Court decided that petitioner was not entitled to an abatement of interest under section 6404 with respect to the 1976 taxable year.

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C. Petitioner's Continuing Focus On 1976

As previously stated, when petitioner submitted her Form 12153 to respondent her principal focus was on tax year 1976. She argues that she owes no tax for 1976 and that interest on the 1976 income tax liability should have been abated, notwithstanding the agreed decision that was entered in Docket No. 3101-84 and prior adverse Court rulings. Petitioner has continued to so argue, not only during the course of the CDP hearing but also in the present case.

D. Collection Alternatives

Petitioner did not raise any collection alternatives, such as an installment agreement or offer-in-compromise, either on her Form 12153 or during the CDP hearing. Petitioner instead told the SO that she wished to revisit the merits of the tax deficiency for 1976 and the statutory interest thereon.

E. Notice Of Determination

During the course of the CDP hearing petitioner did not challenge either the existence or amount of her outstanding liability for 2016 and 2017, nor did she propose a collection alternative. Accordingly, the SO recommended that the proposed levy action be sustained and her Appeals team manager concurred. On September 15, 2020, the Appeals Office sent petitioner the Notice Of Determination that sustained the proposed levy action. In response, petitioner timely filed a petition with this Court on October 12, 2020.

Discussion

A. Summary Judgment

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy. Rule 121(a). The Court may grant summary judgment only if there are no genuine disputes or issues of material fact. Naftel v. Commissioner, 85 T.C. 527, 528-529 (1985).

B. Hearings Under Section 6330

Section 6331(a) authorizes the Commissioner to levy on property and property rights of a taxpayer liable for taxes who fails to pay those taxes within 10 days after a notice and demand for payment is made. Section 6331(d) provides that the levy authorized in section 6331(a) may be made with respect to "unpaid tax" only if the Secretary has given written notice of his intent to levy to the taxpayer 30 days before the levy. Section 6330(a) requires the Secretary to send a written notice to the taxpayer of the amount of the unpaid tax and of the taxpayer's right to a section 6330 hearing at least 30 days before the levy is begun.

If a section 6330 hearing is requested, the hearing is to be conducted by the IRS Appeals Office, and at the hearing the officer conducting the hearing must verify that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(b)(1), (c)(1). The taxpayer may raise at the hearing "any relevant issue relating to the unpaid tax or the proposed levy". Sec. 6330(c)(2)(A). The taxpayer may also raise challenges to the existence or amount of the underlying tax liability at a hearing 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); see Montgomery v. Commissioner, 122 T.C. 1, 8-10 (2004).

This Court has jurisdiction under section 6330 to review the Commissioner's administrative determinations. Sec. 6330(d); see Iannone v. Commissioner, 122 T.C. 287, 290 (2004). Where the underlying tax liability is properly at issue, the Court reviews the determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Where the underlying tax liability is not at issue, the Court reviews the determination for abuse of discretion. Id. at 182.

1. Underlying Tax Liability

Petitioner did not challenge the existence or amount of her outstanding tax liabilities for 2016 and 2017. Instead, she disagreed with the treatment of her 1976 deficiency case in Docket No. 3101-84. Accordingly, the existence or amount of the underlying tax liabilities for 2016 and 2017 is not before the Court and need not be considered. See Giamelli v. Commissioner, 129 T.C. 107, 114-115 (2007); Magana v. Commissioner, 118 T.C. 488, 493 (2002).

In contrast to her 2016 and 2017 tax liabilities, petitioner has consistently challenged her liability for 1976, arguing that she is entitled to a refund of both tax and interest paid in respect of the deficiency for that year. However, tax year 1976 is not properly before the Court in the present collection review case. Petitioner's challenge to respondent's deficiency determination for 1976 was previously decided by the Court pursuant to an agreed decision at Dkt. No. 3101-84. Further, petitioner twice litigated her claim for abatement of interest in respect of the deficiency for 1976 before the Court at Dkt. Nos. 22940-07 and 26207-15. The decisions in all three of those dockets are final. In short, petitioner's desire to relitigate these matters is barred by the doctrine of res judicata. As petitioner was previously advised by the Court in Dkt. No. 26207-15, the doctrine of res judicata bars repetitious suits on the same cause of action. See Commissioner v. Sunnen, 333 U.S. 591, 597-598 (1948); Koprowski v. Commissioner, 138 T.C. 54, 59-60 (2012).

Accordingly, the Court will not consider any adjustment to the amount of the underlying tax liability for 2016 and 2017, nor will the Court revisit petitioner's claims regarding 1976. Rather, the Court will review respondent's determination for abuse of discretion. Goza v. Commissioner, 114 T.C. at 181-182. Whether an abuse of discretion has occurred depends upon whether the exercise of discretion is without reasonable basis in fact or law. Freije v. Commissioner, 125 T.C. 14, 23 (2005); Ansley-Sheppard-Burgess Co. v. Commissioner, 104 T.C. 367, 371 (1995).

2. Collection Alternatives

It is not an abuse of discretion for the IRS Appeals Office to decline to consider an installment agreement or offer-in-compromise where no specific collection alternative proposal is ever placed before the reviewing officer. See, e.g., Kindred v. Commissioner, 454 F.3d 688, 696 (7th Cir. 2006); Kendricks v. Commissioner, 124 T.C. 69, 79 (2005). In the present case, petitioner did not request in her Form 12153 either an installment agreement or an offer-in-compromise. Nor did petitioner ever subsequently propose one during the course of the CDP hearing.

3. Verification of Procedures

It is well settled that no particular form of verification is required; that no particular document need be provided to taxpayers at a hearing conducted under section 6330; and that Forms 4340, Certificate of Assessments, Payments, And Other Specified Matters, and transcripts of account may be used to satisfy the requirements of section 6330(c)(1) regarding verification of procedures. Roberts v. Commissioner, 118 T.C. 365, 371 n.10 (2002) (citing Davis v. Commissioner, 115 T.C. 35 (2000)), *aff'd*, 329 F.3d 1224 (11th Cir. 2003); Nestor v. Commissioner, 118 T.C. 162, 166 (2002); Lunsford v. Commissioner, 117 T.C. 183, 187-188 (2001); see Koff v. United States, 3 F.3d 1297, 1298 (9th Cir. 1993). The Forms 4340 and other exhibits that are attached to respondent's Motion For Summary Judgment and to the accompanying declaration of the SO, together with the statements of the SO in the Attachment to the notice of determination, show that required assessment and collection procedures were followed.

4. Challenges to the Appropriateness of the Collection Action

Petitioner has not at any time raised any challenge to the appropriateness of the proposed collection action for 2016 and 2017 other than to argue that the IRS owes her money for tax year 1976. That argument has already been considered and found wanting, and it need not be further addressed. Cf., Giamelli v. Commissioner, 129 T.C. at 114-115; Magana v. Commissioner, 118 T.C. at 493.

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 March 11, 2021, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the proposed collection action (levy) in respect of petitioner's outstanding income tax liabilities for the taxable (calendar) years 2016 and 2017, as determined by respondent's Appeals Office in its Notice Of Determination dated September 15, 2020, upon which notice this case is based.

(Signed) Peter J. Panuthos
Special Trial Judge