



UNITED STATES TAX COURT
WASHINGTON, DC 20217

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| Bryan Edward Menge, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Docket No. 22622-16. |
| |) | |
| Commissioner of Internal Revenue, |) | |
| |) | |
| Respondent. |) | |

ORDER AND DECISION

By statutory notice of deficiency dated July 20, 2016, respondent determined a deficiency in petitioner's Federal income tax of \$0.78, an addition to tax pursuant to section 6651(a)(1) of \$802.95, and an accuracy-related penalty pursuant to section 6662(d) of \$1,070.60 for the 2013 taxable year.¹ On October 18, 2016, petitioner filed a timely petition. In his petition, petitioner sought to dispute not only the adjustments in the notice of deficiency for 2013, but also made claims with respect to other tax years, collection actions, and worker classification. By Order dated December 7, 2017, the Court granted respondent's motion to dismiss for lack of jurisdiction, striking references to other tax years and issues unrelated to the adjustments in the notice of deficiency.

On April 9, 2018, petitioner filed a motion for summary judgment (which was in the nature of a motion for partial summary judgment). In the motion petitioner claimed that he was entitled to a credit of \$2,959.82 in total taxes reported on Form WH-60 issued by the United States Department of Labor (DOL), including \$2,266.33 withheld as Federal income tax. On May 9, 2018, respondent filed a response to the motion, asserting that petitioner had not established that the claimed credit of \$2,266.33 for Federal income tax withheld would result in an overpayment of the tax reported on his Federal income tax return or affect the determination of a deficiency or overpayment of tax for 2013.

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

On March 4, 2019, petitioner filed a second motion for summary judgment, claiming that he was entitled to judgment in his favor in the amount of \$651,328.93. In this motion petitioner did not provide any factual or legal basis to support his claim.

On June 24, 2019, respondent filed a motion for partial summary judgment, requesting the Court to conclude that \$60,628.03 withheld by the United States Department of Housing and Urban Development (HUD) from a Federal contract entered into by Menge Construction for unpaid wages and benefits, which was subsequently transferred to the DOL, was not a payment of tax for the 2013 taxable year. In a footnote in the motion respondent noted that \$9,065.35 of the \$60,628.03 was paid to petitioner as wages by the DOL and that the DOL withheld \$2,266.33 from the \$9,065.35 as Federal income tax withholding on wages. The motion was supported by a declaration of the Director of Enforcement, Wage Hour Division of the DOL. Petitioner did not respond to the motion, despite an order of this Court directing him to do so.

On June 26, 2019, respondent then filed a motion to dismiss for lack of jurisdiction and to strike with respect to the section 6651(a)(1) addition to tax for 2013. Respondent sought to have petitioner's case, insofar as it related to the section 6651(a)(1) addition to tax for 2013, dismissed for lack of jurisdiction upon the grounds that the addition to tax was not attributable to a deficiency in tax, but rather based on the tax that petitioner had reported on his 2013 return. Respondent asserted that the addition to tax had previously been assessed and that assessment would be abated and no further assessment with respect to the section 6651(a)(1) would be made if the Court granted the motion. Petitioner did not respond to respondent's motion, despite an order of the Court directing him to do so.

On July 18, 2019, petitioner filed a motion to strike, requesting that the Court strike portions of respondent's motion for partial summary judgment. On August 21, 2019, respondent filed a response to petitioner's motion to strike, requesting that the motion be denied. On September 4, 2019, petitioner filed documents titled "Memorandum in Support of Petitioners Motion to Strike and Response" (which was in the nature of exhibits) and "Memorandum in Support of Petitioners Motion to Strike and Response Document".

On March 4, 2020, pursuant to section 7443A(b), this case was assigned to a Special Trial Judge of this Court solely for disposition of the aforementioned motions.

On March 6, 2020, petitioner filed a motion for oral argument, seeking the Court to calendar the aforementioned motions for hearing.

On March 9, 2020, petitioner then filed a memorandum in support of his second motion for summary judgment. In the memorandum petitioner made arguments bordering on frivolous regarding the remainder of the \$60,628.03 withheld from Menge Construction which were not paid to petitioner as wages. Petitioner did not explain how the funds withheld by HUD from Menge Construction in excess of the amount paid to him as wages would have any relevance to this case. Petitioner also asserted that he was entitled to a judgment of \$651,328.93 in his favor but did not provide any factual or legal basis to support his assertion.

By Order dated March 12, 2020, the Court granted respondent's motion for partial summary judgment, finding that petitioner had not made a payment that would give rise to an overpayment for 2013. The Court also recharacterized petitioner's 2018 motion for summary judgment as a motion for partial summary judgment and granted that recharacterized motion, finding that petitioner was entitled to a credit of \$2,266.33 for Federal income taxes withheld out of the \$60,628.03 withheld from Menge Construction by HUD. Additionally, the Court granted respondent's motion to dismiss for lack of jurisdiction and to strike (and thus so much of this case as it pertains to the section 6651(a)(1) addition to tax was dismissed for lack of jurisdiction), and denied petitioner's second motion for summary judgment, petitioner's motion to strike, and petitioner's motion for oral argument. Finally, the Court warned petitioner that if he continued to assert frivolous positions, he might be subject to penalties under section 6673.

On April 17, 2020, pursuant to Rule 50 and the Court's March 12, 2020, Order, respondent filed a motion for entry of decision, requesting that the Court enter a decision in this case in accordance with a proposed decision document (which respondent attached to the motion), which reflected that there is no deficiency in income tax and no section 6662(d) accuracy-related penalty due from petitioner for 2013. On May 18, 2020, petitioner filed an objection to respondent's motion for entry of decision, asserting, inter alia, that this case is not about the deficiency (plus the penalty and interest), but rather:

this case is really about * * * many years and thousands of hours of the petitioner's life spent trying to resolve tax related issues with the IRS that started in 2011 and were directly caused in part or in whole

by the unlawful violations * * * by US government contractors, officials and employees of HUD, of the Federal District Court for the District of Rhode Island, the Kent County Superior Court, the DOL, and the IRS.

On June 26, 2020, this case was assigned to the undersigned judge for trial or other disposition.

On November 18, 2020, petitioner filed a motion to calendar, requesting that the Court calendar this case for trial to afford him his “constitutional right to be heard, in a meaningful manner before a jury of his peers regarding all his outstanding claims against the Government of the United States, parties working for and parties working with said government under contractual agreement, presently at issue in this case.”

On March 25, 2021, petitioner filed a first request for admissions; on March 29, 2021, he filed a second request for admissions; and on April 14, 2021, he filed a third request for admissions. Each of these requests relates to facts and assertions that are irrelevant to this case.

On April 19, 2021, respondent filed a motion for protective order pursuant to Rule 103, requesting the Court to enter an order that respondent need not answer petitioner’s requests for admissions and that petitioner not be permitted to pursue formal discovery until the Court decides respondent’s motion for entry of decision.

On April 20, 2021, petitioner filed a motion for hearing on jurisdiction, seeking the Court to grant his “constitutionally protected due process right to a hearing” to allow him to argue that the Tax Court lacked jurisdiction to issue numerous orders, including the March 12, 2020, Order, and therefore those orders are void. On April 22, 2021, petitioner filed a motion for oral argument, seeking the Court to grant his “constitutionally protected due process right to a hearing” to argue against respondent’s motion for protective order pursuant to Rule 103.

On May 11, 2021, petitioner filed a motion for protective order pursuant to Rule 103, requesting that the Court enter an order directing respondent to stop all collection actions against him with respect to a civil penalty for 2013 and an

income tax liability for 2014. These issues were previously litigated and resolved in petitioner's favor in this Court in Docket No. 17117-18 L.²

Discussion

In Docket No. 17117-18L, the Court, in its April 27, 2020, Order and Decision, expressed disappointment in petitioner's lack of cooperation in those proceedings, particularly given respondent's concession of the notice of determination in that case. We express the same disappointment here as it is apparent that petitioner has no desire to cooperate in these proceedings, particularly in the light of respondent's concession of the deficiency and accuracy-related penalty for 2013, which are the only issues that remain in dispute over which the Court has jurisdiction. After having reviewed the parties' pending motions and other filings in this case, we find that petitioner's arguments have no merit whatsoever, and to avoid further waste of the Court's time (as well as respondent's, and taxpayers with genuine controversies) we shall proceed to enter a decision in accordance with the proposed decision document attached to respondent's motion for entry of decision.

Section 6673(a)(1) authorizes this Court to impose on the taxpayer a penalty payable to the United States and not in excess of \$25,000 whenever it appears that: (1) the taxpayer has instituted or maintained proceedings primarily for delay; (2) the taxpayer's position in such proceedings is frivolous or groundless; or (3) the taxpayer unreasonably failed to pursue available administrative remedies. In the Court's March 12, 2020, Order petitioner was warned that if he continued to assert frivolous positions, then he may be subject to section 6673 penalties.³ After

²In Docket No. 17117-18 L, respondent filed a motion for entry of decision, and the Court entered an order and decision on April 27, 2020. In the order and decision, the Court did not sustain the determinations set forth in a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 issued to petitioner dated September 30, 2019, for petitioner's liability for a civil penalty for 2013 and an income tax liability for 2014. Similar to the instant case, respondent had conceded the case in full, yet petitioner would not sign the proposed decision document.

³Additionally, the Court's April 27, 2020, Order and Decision in Docket No. 17117-18L made reference to the Court's March 12, 2020, Order in this case, and

respondent filed a motion for entry of decision, petitioner filed an objection to the motion and other filings continuing to maintain meritless and irrelevant positions. In view of the foregoing and the fact that having to deal with this matter wasted not only the Court's time but respondent's as well, we will require petitioner to pay to the United States a penalty under section 6673(a)(1) of \$500.

Premises considered, it is hereby

ORDERED that respondent's Motion for Entry of Decision, filed April 17, 2020, is granted. It is further

ORDERED that petitioner's Motion to Calendar Case for Trial, filed November 18, 2020, is denied as moot. It is further

ORDERED that respondent's Motion for Protective Order Pursuant to Rule 103, filed April 19, 2021, is denied as moot. It is further

ORDERED that petitioner's Motion for Hearing on Jurisdiction, filed April 20, 2021, is denied as moot. It is further

ORDERED that petitioner's Motion for Oral Argument, filed April 22, 2021, is denied as moot. It is further

ORDERED that petitioner's Motion for Protective Order Pursuant to Rule 103, filed May 11, 2021, is denied as moot. It is further

ORDERED and DECIDED that there is no deficiency in Federal income tax due from petitioner for the 2013 taxable year. It is further

ORDERED and DECIDED that there is no penalty due from petitioner under I.R.C. section 6662(d) for the 2013 taxable year. It is further

warned petitioner that the sec. 6673(a)(1) penalty may be imposed against him "should he return to the Court and advance a similar argument."

ORDERED and DECIDED that there is a penalty due from petitioner under I.R.C. section 6673(a)(1) for the 2013 taxable year in the amount of \$500.00.

(Signed) Tamara W. Ashford
Judge