United States Tax Court

T.C. Memo. 2022-44

EDGERTON MIGHTY AND EULALEE MIGHTY,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 19064-21L. Filed May 4, 2022.

Edgerton Mighty and Eulalee Mighty, pro sese.

James P.A. Caligure and *Ryan J. Hough*, for respondent.

MEMORANDUM OPINION

LAUBER, *Judge*: In this collection due process (CDP) case, petitioners seek review pursuant to sections 6320(c) and 6330(d)(1) of the determination by the Internal Revenue Service (IRS or respondent) to uphold the filing of a Notice of Federal Tax Lien (NFTL) for 2014.[1] Respondent has filed a Motion for Summary Judgment (Motion), contending that petitioners are not entitled to challenge their underlying tax liability and that the settlement officer (SO) did not abuse her discretion. We agree and accordingly will grant the Motion.

[1] Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Served 05/04/22

[*2] *Background*

The following facts are derived from the parties' pleadings and motion papers, including the attached declaration and exhibits. Petitioners resided in New York when the Petition was timely filed.

Petitioners filed a timely Federal income tax return for 2014, which the IRS selected for examination. During the examination the IRS concluded that petitioners had failed to substantiate itemized deductions totaling $35,923 and deductions of $12,605 reported on Schedule C, Profit or Loss From Business. The IRS also determined that petitioners had failed to report "other income" of $28,296. The IRS made the latter determination on the basis of a Form 1099–C, Cancellation of Debt, issued by JPMorgan Chase Bank, N.A. (Chase). The Form 1099–C reported that petitioners during 2014 had received income of $28,296 from cancellation of indebtedness, and the IRS determined that this sum was includible in their 2014 gross income. The IRS also made several other minor and computational adjustments.

On March 22, 2016, the IRS issued petitioners a timely notice of deficiency via certified mail. For 2014 the notice determined a deficiency of $17,304 and an accuracy-related penalty of $3,461. The notice advised petitioners that, if they wished to challenge this determination, they would need to petition this Court within 90 days. *See* § 6213(a). They did not do so. Accordingly, on August 15, 2016, the IRS assessed the deficiency and penalty for 2014 as set forth in the notice.[2]

On March 6, 2017, petitioners filed an amended return for 2014. When submitting the amended return, they explained that Chase had issued duplicate Forms 1099–C for 2014, one addressed to their daughter as the borrower and another to petitioners as guarantors. The IRS reviewed the amended return and agreed with petitioners that the debt cancellation of $28,296 did not constitute taxable income to them. The IRS accordingly abated the portions of the deficiency and the penalty

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[2] The notice of deficiency also addressed petitioners' 2013 tax year, determining for that year a deficiency of $6,556 and an accuracy-related penalty of $1,311. But the collection action at issue relates to 2014 only; neither the NFTL nor the notice of determination makes any reference to petitioners' 2013 tax year. In a CDP case such as this, our jurisdiction depends on the issuance of a notice of determination following a timely request for a CDP hearing and the filing of a petition for review. §§ 6320(c), 6330(d)(1); *Orum v. Commissioner*, 123 T.C. 1, 8, 11–12 (2004), *aff'd*, 412 F.3d 819 (7th Cir. 2005). Because the record fails to establish that the IRS issued petitioners a notice of determination with respect to 2013, we lack jurisdiction over that year.

[*3] attributable to cancellation-of-indebtedness income. For 2014 this reduced the deficiency to $10,231 and the penalty to $2,046. On March 13, 2018, petitioners signed Form 4549, Income Tax Examination Changes, which reflected these modifications.

On November 5, 2019, in an effort to collect the reduced balance due, the IRS issued petitioners Letter 3172, Notice of Federal Tax Lien Filing and Your Right to a Hearing. Petitioners timely submitted Form 12153, Request for a Collection Due Process or Equivalent Hearing.[3] They expressed interest in a collection alternative, checking the box "Installment Agreement." As the basis for their dispute they stated that "incorrect $28,000 liability was added to income [for 2014] due to incorrect information that agency [Chase] reported [to] IRS."

Petitioners' case was assigned to an SO in the IRS Independent Office of Appeals in Holtsville, New York. The SO verified that petitioners' tax liability for 2014 had been properly assessed, that the accuracy-related penalty had received the requisite supervisory approval, and that all other legal and administrative requirements had been satisfied. On September 14, 2020, the SO acknowledged petitioners' hearing request and scheduled a telephone conference for October 27, 2020. The SO advised them that, if they were requesting a collection alternative, they would need to submit Form 433–A, Collection Information Statement for Wage Earners and Self-Employed Individuals, with supporting financial data. They did not do so.

Petitioners participated in the telephone conference as scheduled. During the conference the SO explained that the $28,296 of cancellation-of-indebtedness income had already been removed from their 2014 account. The SO advised that this reversal reduced, but did not eliminate, the deficiency and penalty for 2014 because the IRS had made other adjustments, including the disallowance of itemized deductions of $35,923 and Schedule C expense deductions of $12,605. The SO explained that petitioners could not challenge these adjustments during the CDP hearing because they had had a prior opportunity to do so, i.e., by petitioning this Court within 90 days of receiving the notice of deficiency.

Although petitioners had not submitted Form 433–A before the hearing, the SO offered them another chance to do so. On November 3, 2020, they submitted Form 433–D, Installment Agreement, offering to

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[3] The record indicates that the IRS in May 2017 issued petitioners a levy notice. Petitioners did not timely submit Form 12153 with respect to that levy notice.

[*4] make monthly payments of $230. The SO confirmed receipt and scheduled another telephone conference to discuss their proposal.

On November 12, 2020, petitioners telephoned the SO, again asking about the $28,296 cancellation-of-indebtedness income. The SO explained a second time that the IRS had already removed that income from their account, reducing their deficiency to $10,231 and the penalty to $2,046. Petitioners asked why they still owed tax, and the SO reminded them that the IRS had made a number of other, unrelated adjustments—chiefly, disallowance of deductions exceeding $48,000.[4] The SO instructed petitioners to call back in December 2020 to discuss their proposed installment agreement.

On December 21, 2020, petitioners called the SO to discuss the case. They continued to question their underlying liability for 2014. The SO again explained why they still owed tax and why they were not permitted to challenge the IRS's disallowance of deductions as reflected in the notice of deficiency. The SO asked whether they wanted to discuss the proposed installment agreement or the possibility of lien withdrawal. Petitioners declined, so the SO advised them that she would close the case.

On April 27, 2021, the IRS issued the notice of determination sustaining the NFTL filing. Petitioners timely petitioned this Court, listing the Chase Form 1099–C as the reason they "disagreed with the IRS determination in this case." On February 9, 2022, respondent filed his Motion, to which we directed petitioners to respond by March 14, 2022. They did not file a response to the Motion, but they did file a pre-trial memorandum and a subsequent letter, in both of which they challenged the Chase Form 1099–C; they raised no issue regarding collection alternatives.

Discussion

A. *Summary Judgment Standard*

The purpose of summary judgment is to expedite litigation and avoid costly, time-consuming, and unnecessary trials. *Fla. Peach Corp. v. Commissioner*, 90 T.C. 678, 681 (1988). The Court may grant summary judgment when there is no genuine dispute as to any material fact

[4] The IRS reduced the deficiency by $7,073 and the penalty by $1,415, but the Form 4549 listed these amounts as "overpayments." This might explain why petitioners asked the SO why they still owed tax.

[*5] and a decision may be rendered as a matter of law. Rule 121(b); *Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994). Where the moving party properly makes and supports a motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of such party's pleading" but must set forth specific facts showing a genuine dispute for trial. Rule 121(d). Petitioners have identified no material facts in genuine dispute, and we find that this case may be adjudicated summarily.

B. *Standard of Review*

Sections 6320(c) and 6330(d)(1) do not prescribe the standard of review that this Court should apply in reviewing an IRS administrative determination in a CDP case. The general parameters for such review are marked out by our precedents. Where the validity of a taxpayer's underlying liability is properly at issue, we review the IRS determination de novo. *Goza v. Commissioner*, 114 T.C. 176, 181–82 (2000). Where the taxpayer's underlying liability is not properly at issue, we review the IRS decision for abuse of discretion only. *See id.* at 182. Abuse of discretion exists when a determination 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).

A taxpayer may dispute his underlying liability in a CDP case, but only if he did not receive a valid notice of deficiency or otherwise have a prior opportunity to contest his liability. § 6330(c)(2)(B); *Sego v. Commissioner,* 114 T.C. 604, 609 (2000). A notice of deficiency is valid if it was properly mailed to the taxpayer at his last known address. § 6212(b)(1); *Hoyle v. Commissioner*, 131 T.C. 197, 200, 203–04 (2008), *supplemented by* 136 T.C. 463 (2011). The taxpayer's last known address is generally the address appearing on his "most recently filed and properly processed Federal tax return." Treas. Reg. § 301.6212-2(a).

The record confirms that the IRS mailed a valid notice of deficiency to petitioners' last known address, which is the same address they listed on the Petition. They did not dispute receipt of that notice, either during the CDP hearing or in their Petition. They had had a prior opportunity to challenge their 2014 liability by petitioning this Court in response to the notice of deficiency. Because they failed to do so, they were not entitled to challenge their 2014 tax liability during the CDP

[*6] hearing or in this Court. We thus review the SO's actions for abuse of discretion only. *See* § 6330(c)(2)(B); *Goza*, 114 T.C. at 182.[5]

C. *Abuse of Discretion*

In deciding whether the SO abused her discretion in sustaining the collection action, we consider whether she (1) properly verified that the requirements of applicable law or administrative procedure have been met, (2) considered any relevant issues petitioners raised, and (3) considered "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of [petitioners] that any collection action be no more intrusive than necessary." § 6330(c)(3); *see* § 6320(c). Our review of the record establishes that the SO properly discharged all of her responsibilities under sections 6320(c) and 6330(c).

The SO confirmed that all applicable legal and administrative requirements had been met. She verified that the notice of deficiency was sent to petitioners' last known address and that their tax liability was properly assessed. And she confirmed that the accuracy-related penalty for 2014 received the requisite supervisory approval under section 6751(b)(1). The only issue petitioners raised was the $28,296 cancellation-of-indebtedness income, and the SO appropriately explained to petitioners that this problem had already been remedied.

Although petitioners failed to submit a Form 433–A, the SO gave them several opportunities to propose a collection alternative. Petitioners ultimately suggested an installment agreement, and the parties had a telephone conversation about this. During that call the SO asked them whether they wished to pursue their installment agreement proposal or another collection alternative, such as lien withdrawal. When they declined, the SO advised them that she would close the case and uphold the NFTL filing.

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[5] Even if petitioners were entitled to challenge their underlying liability, they failed to raise a proper challenge during the CDP hearing. *See LG Kendrick, LLC v. Commissioner*, 146 T.C. 17, 34 (2016), *aff'd*, 684 F. App'x 744 (10th Cir. 2017). The only liability-related issue they mentioned to the SO was the $28,296 of cancellation-of-indebtedness income, which had already been removed from their 2014 account. They neither addressed nor submitted evidence regarding the adjustments on which their reduced liability was based, chiefly the disallowance of itemized deductions of $35,923 and Schedule C expense deductions of $12,605.

[*7] The SO then waited four more months before issuing the notice of determination. Petitioners did not communicate with the SO during that period. The SO did not abuse her discretion in closing the case when she did. *See Hartmann v. Commissioner*, T.C. Memo. 2018-154, 116 T.C.M. (CCH) 301, 304 ("[A]n SO is not required to negotiate indefinitely or wait any specific time before issuing a determination."), *aff'd*, 785 F. App'x 906 (3d Cir. 2019).

Finding no abuse of discretion in any respect, we will grant respondent's Motion and sustain the collection action. We note that petitioners are free to submit to the IRS at any time, for its consideration and possible acceptance, a collection alternative in the form of an installment agreement or an offer-in-compromise, supported by the requisite financial information.

To reflect the foregoing,

An appropriate order and decision will be entered for respondent.