

4-28 Westbury

UNITED STATES TAX COURT

WASHINGTON, DC 20217

ARNOLD H. PUGH,)
Petitioner,)
v.)
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.)

Docket No. 20893-06

ADM.
RECORDED
SERVICE
FILES

ORDER AND DECISION

This matter is before the Court on Respondent's Motion for Summary Judgment And To Impose A Penalty Under I.R.C. S 6673 on March 31, 2008. Petitioner was given until April 21, 2008, in which to file a response. As of today, petitioner has not filed a response. Because we find there is no material fact in dispute, we shall grant respondent's motion.

Background

Petitioner earned \$98,476 of wages as a Verison technician in 2003, reported that amount as wages on his return for 2003, yet claimed a Schedule A itemized deduction of that amount for "[a]n unrestricted claim of right for personal labor." Petitioner also attached a Form 8275, Disclosure Statement, in which he argued that his wages were not taxable under a claim of right and under section 1341.

Despite numerous warnings and letters from respondent, petitioner failed to file a corrected return. Instead, petitioner sent frivolous correspondence to respondent concerning verification of respondent's authority to examine his tax return. Consequently, respondent assessed a frivolous penalty against petitioner for 2003 on June 15, 2006. Respondent then issued a letter, dated June 22, 2006, to petitioner concerning proposed examination changes to petitioner's tax return for 2003. Respondent disallowed the \$98,476 itemized deduction "[since the amounts [petitioner] deducted on [his] tax return as an indication of [petitioner's] protest to Federal income tax laws

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

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are not permitted by law, we have refigured [petitioner's] tax to include these amounts."

Again, despite respondent's warning, petitioner failed to file a corrected return. Instead, petitioner responded with additional frivolous correspondence to respondent concerning the proposed adjustments to his return for 2003. Respondent replied that he had considered the information petitioner provided but it did not change respondent's determination.

Respondent issued a statutory notice of deficiency to petitioner on September 15, 2006, determining a \$20,165.00 deficiency in income tax against petitioner and a \$4,033.00 accuracy-related penalty under section 6662 for the tax year 2003.

Petitioner filed a timely petition in which he alleges he is entitled to deduct all of his wages because compensation for services is deductible.

Respondent moved for summary judgment and petitioner was given time in which to respond or object to respondent's summary judgment motion.

Discussion

We are asked to grant summary judgment. Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. See, e.g., FPL Group, Inc. v. Commissioner, 116 T.C. 73, 74 (2001). A motion for summary judgment will be granted if the pleadings and admissions show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. See Rule 121(b); Elect. Arts, Inc. v. Commissioner, 118 T.C. 226, 238 (2002). The moving party has the burden of proving that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. See, e.g., Rauenhorst v. Commissioner, 119 T.C. 157, 162 (2002).

Petitioner attached a Form W-2 to his return for 2003 reflecting that he received \$98,476 of income. Petitioner does not dispute the amount of the wages; rather, he asserts that he is entitled to deduct these wages as a Schedule A miscellaneous itemized deduction using the frivolous arguments of "claim of right" and "Title 26, 1341. In essence, the claim of right assertion is a rehash of the oft-rejected anti-tax argument that

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wages and other compensation for services rendered are not subject to tax.

Petitioner's argument that his wages are deductible under a claim of right is a frivolous argument. The so-called "claim of right" theory is no different than the argument that some taxpayers have made that compensation for personal services is not subject to tax. Courts repeatedly have rejected these types of arguments as frivolous and have penalized the taxpayers who make them. See e.g., Stelly v. Commissioner, 761 F.2d 1113, 1115 (5th Cir. 1985) (argument that taxing wage and salary income is unconstitutional because compensation for labor is an even exchange is obviously frivolous); Abrams v. Commissioner, 82 T.C. 403, 413 (1984) (rejecting argument that wages are not subject to tax as frivolous and groundless and imposing a \$5,000 penalty under section 6673).

Petitioner's other argument that section 1341 allows him to deduct his income is also frivolous. Section 1341 applies only to those situations in which a taxpayer properly reports income in one year and later repays all or a portion of it in a later year because the taxpayer did not have an unrestricted right to that income. The section allows the taxpayer to take a deduction in the later year for the amount repaid. See Wicor, Inc. v. United States, 263 F.3d 659, 661 (7th Cir. 2001). Section 1341 does not apply unless it is "established after the close of the prior taxable year (or years) that the taxpayer did not have an unrestricted right to such income. Sec. 1341(a)(2). Furthermore, the taxpayer must return the funds that he or she previously reported as taxable income before the taxpayer can claim a deduction. See Chernin v. United States, 149 F.3d 805, 815-16 (8th Cir. 1998); 1.1341-1(a), Income Tax Regs. Section 1341 does not apply here.

We find no merit to any of petitioner's arguments. We further note that the district court for the eastern district of New York also found petitioner's argument lacked merit. United States v. Pugh, No. 1:07 Civ. 02456 (E.D.N.Y. Nov. 14, 2007). Based on the record before us, we find there is no genuine issue of material fact in dispute. Accordingly, respondent is entitled to summary judgment with respect to the deficiency amount.

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With respect to the additions to tax under section 6662, respondent bears the burden of production. Rule 142(b). Because petitioner makes only frivolous arguments, we find that these arguments establish that the underpayment was due to petitioner's negligence or more likely his disregard of the rules and regulations.

We now address whether it is appropriate to impose an additional penalty against petitioner under section 6673, which authorizes the Tax Court to require a taxpayer to pay to the United States a penalty up to \$25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless. See Scruggs v. Commissioner, T.C. Memo. 1995-355, affd. without published opinion, 117 F.3d 1433 (11th Cir. 1997); Zyqlis v. Commissioner, T.C. Memo. 1993-341, affd. without published opinion, 29 F.3d 620 (2d Cir. 1994); Fischer v. Commissioner, T.C. Memo. 1994-586; McDonald v. Commissioner, T.C. Memo. 1992-586; Schott v. Commissioner, T.C. Memo. 1991-457.

We note that the type of arguments petitioner raises have been deemed by this Court to be frivolous and/or sanctionable under section 6673.

Petitioner deserves a penalty under section 6673(a)(1), and that penalty should be substantial, if it is to have the desired deterrent effect. Cf. Talmage v. Commissioner, T.C. Memo. 1996-114, affd. without published opinion 101 F.3d 695 (4th Cir. 1996). The purpose of section 6673 is to compel taxpayers to think and to conform their conduct to settled tax principles. Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986); see also Grasselli v. Commissioner, T.C. Memo. 1994-581.

In this proceeding now before the Court, petitioner asserts nothing but frivolous and groundless arguments. It is apparent from the entire record that petitioner instituted or maintained this proceeding primarily, if not exclusively, as a protest against the Federal income tax system and his proceeding in this Court is merely a continuation of petitioner's refusal to acknowledge and satisfy his tax obligations. We are convinced that no purpose would be served in repeating all that has been said about his frivolous and misguided arguments.

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We are also convinced that petitioner is aware of the warnings this Court has given to taxpayers who provide the type of arguments petitioner provided in this case yet petitioner persisted and wasted this Court's limited time and resources. We therefore shall require petitioner to pay a penalty pursuant to section 6673(a)(1). In addition, we take this opportunity to admonish petitioner that the Court will consider imposing a larger penalty if petitioner returns to the Court and advances similar arguments in the future.

Accordingly, upon due consideration and for cause, it is

ORDERED that this case is stricken for trial from the April 28, 2008, New York, New York (Westbury, New York) trial session of the Court. It is further

ORDERED that respondent's Motion for Summary Judgment And To Impose A Penalty Under I.R.C. § 6673, filed March 31, 2008, is granted. It is further

ORDERED AND DECIDED that there is a \$20,165 deficiency in income tax due and a \$4,033 accuracy-related penalty due from petitioner for the taxable year 2003 with respect to which respondent may proceed with collection. It is further

ORDERED AND DECIDED that petitioner shall pay to the United States a penalty under section 6673 of \$10,000.

**(Signed) Diane L. Kroupa
Judge**

ENTERED: **APR 23 2008**