



FAX COVER SHEET

INTERNAL REVENUE SERVICE

**OFFICE OF DIVISION COUNSEL
 (SMALL BUSINESS/SELF-EMPLOYED)
 620 S.W. Main St., Room 312
 Portland, OR 97205
 (503) 326-3186
 FAX: (503) 326-5452**



Date Sent: March 7, 2008	Pages Sent: 15 (Counting Cover)
Deliver To: Paul Meyer, Douglas County Counsel and Nena Cook, Sussman Shank	FAX Number: 541-440-6021 503-248-0130
Organization:	Phone Number:
Sender: Catherine J. Caballero Senior Attorney (Portland, Group 1)	FAX Number: (503) 326-5452
Office: Small Business/Self-Employed	Phone Number: (503) 326-3100 x227
Sent by: _____	Time: _____

THIS DOCUMENT IS INTENDED ONLY FOR THE NAMED ADDRESSEE.

This communication is intended for the sole use of the individual to whom it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient or the employee or agent for delivering the communication to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication may be strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone, and return the communication to the address above via the United States Postal Service. Thank you.

COMMENTS:

Please call me if you have any questions concerning the attached letter.

Catherine Caballero
 503-326-3100, ext. 227



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF DIVISION COUNSEL
SMALL BUSINESS/SELF-EMPLOYED
620 S.W. MAIN ST., ROOM 312
PORTLAND, OR 97205
(503) 326-3188
FAX: (503) 326-5452

March 7, 2008

CC:SB:7:POR:1:CJCaballero

Via Facsimile and Regular Mail

Paul Meyer
County Counsel, Douglas County
Douglas County Courthouse
1036 SE Douglas Ave., Room 321
Roseburg, Oregon 97470

Reference: Emergency Ordinance Proposed by Oregon Lawman Committee

Dear Mr. Meyer:

You have requested that we review an emergency ordinance proposed by the Oregon Lawman Committee which provides that numerous requirements be followed before a Notice of Federal Tax Lien is recorded in Douglas County. The proposed ordinance is based on the premise that a Notice of Federal Tax Lien violates the U.S. Constitution and the premise that a Notice of Federal Tax Lien may not be recorded due to "antecedent Fundamental Law", "res judicata," and the "Clearfield Doctrine." Neither the proposed ordinance nor "The Liberators 11 ad hoc Steering Committee's" written presentation consisting of 28 pages, which you have provided to you us, sets forth any legitimate legal authority to support the ordinance. Instead, the materials consist of frivolous legal arguments of the type which have been repeatedly rejected by the Courts and, thus, do not warrant further discussion. See Rev. Rul. 2005-19, 2005 C.B. 819 and cases cited therein; Schlusser v. Commissioner, T.C. Memo. 2007-298. A copy of Rev. Rul 2005-19 and Schlusser v. Commissioner are attached for your convenience.

The applicable law permitting the Internal Revenue Service to file liens in Douglas County is set forth below. The proposed ordinance, if adopted and enforced, will not be valid and will not prevent the federal tax lien from attaching to property in Douglas County. Further adoption and enforcement of the proposed ordinance will result in the United States taking immediate legal action against Douglas County. Further, innocent third parties such as those identified in I.R.C. § 6323 (i.e., purchasers and secured interest holders) may be harmed by finding that the federal tax lien has priority over their lien because the Douglas County clerk would not accept for filing the Notice of Federal Tax Lien.

Filing Requirements Set Forth in the Proposed Ordinance

The ordinance proposed by the Oregon Lawman Committee for adoption in Douglas County does not permit the electronic filing of Notices of Federal Tax Liens. Instead, it requires that the following procedures be followed before a Notice of Federal Tax Lien is recorded in Douglas County:

1. Every Notice of Federal Tax Lien is to include a copy of Internal Revenue Code § 6331.¹
2. Every Notice of Federal Tax Lien is to be personally signed in front of the Douglas County recorder under penalty of perjury.
3. Every Notice of Federal Tax Lien is to be hand-delivered to the Douglas County recorder accompanied by a) an IRS identification card which is to be copied and filed with the Notice of Federal Tax Lien, b) a thumb print of the IRS officer, c) written proof of authority, d) the work address and personal residence of the IRS officer filing the notice, and e) the name, address and telephone number of the IRS officer's surety/bonding company.
4. "Proof of Certification" that the Notice of Federal Tax Lien being filed meets the requirements of ORS 87.811.
5. An IRS Form 23C and Form 4340 that contain a valid OMB number.
6. "[A]ccurate and complete general English language definitions for all acronyms as well as code or encrypted information" which contains a valid OMB number.
7. Finally, failure to submit the Notice of Federal Tax Lien in the matter described in 1 through 6 above, will result in the Notice of Federal Tax Lien being stamped "Returned for Cause – Fraud."

Applicable Legal Authority As to Form and Content of Notice of Federal Tax Liens

It is well established that under the Supremacy Clause of Article VI of the United States Constitution, the federal law is the supreme law of the land and preempts state law where explicitly stated by Congress, where state law regulates a field Congress intended to be the province of the federal government, or where state law conflicts with federal law. 16 Am. Jur. 2d Constitutional Law § 51. Further, the law is well settled that the form and content of a Notice of Federal Tax Lien is controlled by federal not state or

¹ I.R.C. § 6331 sets forth the rules regarding levy and distraint when a person liable to pay any tax neglects and refuses to pay it after notice and demand.

local law. U.S. v. Union Central Life Insurance Company, 368 U.S. 291, 82 S.Ct. 349 (1961); Matthies v. Nave, 63 Fed. Appx. 403, 2003 WESTLAW 21186531 (9th Cir. 2003) (federal law, not Montana state law, determines whether the Notices of Federal Tax Liens are valid and properly filed); TKB International v. United States, 995 F.2d 1460 (9th Cir. 1993) (the court held that "if the IRS fills out the proper form and files it in the correct location, the lien is 'valid notwithstanding any other provision of law requiring the form or content of a notice of lien'"); United States v. Polk, 822 F.2d 871, 873 (9th Cir. 1987) (the proper form for the filing of a Notice of Federal Tax Lien is Form 668, as prescribed by the Secretary of the Treasury); LMS Holding Company v. United States, 50 F.3d 1526 (10th Cir. 1995) (the proper form for the filing of a Notice of Federal Tax Lien is Form 668, as prescribed by the Secretary of the Treasury); Wesselman v. United States, 501 F.Supp.2d 98, 103, n. 7 (D.D.C. 2007) (any "certification" of a Notice of Federal Tax Lien that may be required under Illinois law has no effect on the tax lien since the form and content of a Notice of Federal Tax Lien are controlled by federal, not state, law); Spahr v. United States, 501 F.Supp. 2d 92, 98 (D.D.C. 2007) (Colorado recording requirements requiring "certification" does not affect validity of federal tax lien which is controlled by federal law); U.S. v. Tempelman, 12 Fed. Appx. 18, 2001 WL 725370 (1st Cir. 2001) (any "certification" requirement under New Hampshire law for the filing of a Notice of Federal Tax Lien does not apply since the form and content required in filing a Notice of Federal Tax Lien is controlled by federal law); Ridenbaugh v. Long, 246 F. Supp. 2d. 849 (S.D. Oh. 2002) (court held that any Ohio law requiring "certification" of a Notice of Federal Tax Lien is not valid). This is because federal law supersedes state and local law relating to the content or form of the Notice of Federal Tax Lien.

The United States Supreme Court has already addressed the issue of conflicting federal and state requirements for lien filing in U.S. v. Union Central Life Insurance Company, 368 U.S. 291, 82 S.Ct. 349 (1961). In that case, the Supreme Court stated that "the subject of federal taxes, including remedies for their collection, has always been conceded to be independent of the legislative action of the states." Accordingly, the Supreme Court held in Union Central Life Insurance Company that the Notice of Federal Tax Lien was valid even though it did not contain a description of specific property to which it attached, as was required by Michigan law.

A federal tax lien arises pursuant to I.R.C. § 6321 when a person fails to pay assessed taxes after demand. The amount assessed becomes a lien on all property and rights to property, whether real or personal, belonging to the person assessed. The recording of a Notice of Federal Tax Lien is not necessary to establish the tax lien, however, it is necessary for the Notice of Federal Tax Lien to obtain priority over certain claimants such as purchasers, holder of a security interest, mechanic's lienor, or judgment lien creditors or certain interests identified in I.R.C. § 6323(b). See I.R.C. § 6322 (the lien that arises under I.R.C. § 6321 continues until the assessed tax liability is satisfied or becomes unenforceable by reason of lapse of time) and § 6323 (sets forth lien priority rules for creditors competing with the federal tax lien).

The Notice of Federal Tax Lien is filed in the location set forth by state law. I.R.C. § 6323(f). However, if state law has not designated one place for filing of the Notice of Federal Tax Lien, as required by I.R.C. § 6323(f)(1)(a)(A), then the Notice of Federal Tax Lien is filed in office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated. The State of Oregon has designated the county recorder as the place for filing Notices of Federal Tax Liens upon real property. O.R.S. 87.806.

The Internal Revenue Code provides that the form and content of the Notice of Federal Tax Lien shall be prescribed by the Secretary of the Treasury. I.R.C. § 6323(f)(3). The Notice of Federal Tax Lien is valid "notwithstanding any other provision of law regarding the form or content of a notice of lien." I.R.C. § 6323(f)(3). Further, the regulations prescribed by the Secretary of the Treasury under I.R.C. § 6323(f)(3) state that the Notice of Federal Tax Lien shall be filed on a Form 668, which must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose. Treas. Reg. § 301.6323(f)-1(d). A Notice of Federal Tax lien filed on Form 668 "is valid notwithstanding any other provision of law regarding the form or content of a notice of lien." *Id.* The Treasury Regulations have the force and effect of law. See United States v. Correll, 389 U.S. 299, 305-06, 88 S.Ct. 445, 19 L.Ed.2d 537 (1967). Thus, the only requirements for filing a Notice of Federal Tax Lien in Douglas County are those that are set forth in I.R.C. § 6323(f)(3) and Treas. Reg. § 301-6323(f)-1(d), as detailed above. The procedures set forth in the Oregon Lawman Committee's proposed ordinance expand the requirements set forth in I.R.C. § 6323(f)(3) and Treas. Reg. 301.6323(f)-1(d). As such, they are not valid or enforceable.

Conclusion


We expect the Commissioners of Douglas County to reject the proposed ordinance. If, however, the proposed ordinance is adopted and enforced, you can expect the United States to take immediate legal action against Douglas County which will result in resources of the county being expended on a matter that is clearly contrary to the law and based on frivolous legal arguments of the type that have been repeatedly rejected by the Courts.

5

If you have any questions, please contact Catherine J. Caballero at 503-326-3186.

Sincerely,

PATRICIA A. DONAHUE
Area Counsel
(Small Business/Self-Employed:Area 7)

By: 
CATHERINE J. CABALLERO
Senior Counsel (Portland, Group 1)
(Small Business/Self-Employed)

Enclosure: Copy of Rev. Rul. 2005-19 and Schlosser v. Commissioner

cc: Nena Cook, Sussman Shank

Westlaw

Rev. Rul. 2005-19

Page 1

Rev. Rul. 2005-19, 2005-14 I.R.B. 819, 2005 WL 583383 (IRS RRU), 2005-1 C.B. 819
(Publication page references are not available for this document.)

C

Internal Revenue Service (I.R.S.)

Revenue Ruling

FRIVOLOUS TAX RETURNS; CONSTITUTIONALLY BASED ARGUMENTS

Released: March 14, 2005

Published: April 4, 2005

Section 6651.--Failure to File Tax Return or to Pay Tax

(Also Sections 6662, 6663, 6673, 6702, 7201, 7203, 7206, and 7408.)

Frivolous tax returns; constitutionally based arguments. This ruling emphasizes to taxpayers and to promoters and return preparers that a taxpayer cannot avoid income tax by making frivolous constitutionally based arguments.

Frivolous tax returns; constitutionally based arguments. This ruling emphasizes to taxpayers and to promoters and return preparers that a taxpayer cannot avoid income tax by making frivolous constitutionally based arguments.

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by claiming that the federal income tax is unlawful because it violates one or more provisions of the United States Constitution, or that they have a constitutional right not to comply with the federal tax laws. The Service is also aware that promoters, including return preparers, are advising or recommending that taxpayers take frivolous positions based on these arguments. Some promoters market a package, kit, or other materials that claim to show taxpayers how they can avoid paying income taxes based on these and other meritless arguments.

This revenue ruling emphasizes to taxpayers and to promoters and return preparers that a taxpayer cannot avoid income tax by making frivolous constitutionally based arguments.

The Service is committed to identifying individuals who attempt to avoid or evade their federal tax obligations by taking frivolous positions, including frivolous constitutional positions. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through its Frivolous Return Pro-

© 2008 Thomson/West. No Claim to Orig. US Gov. Works.

Rev. Rul. 2005-19

Page 2

Rev. Rul. 2005-19, 2005-14 I.R.B. 819, 2005 WL 583383 (IRS RRU), 2005-1 C.B. 819

(Publication page references are not available for this document.)

gram. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether a court injunction should be sought to halt these activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

ISSUES

1. Whether a taxpayer may refuse to file a federal income tax return, or to pay federal income tax, based on claims that the federal income tax is unconstitutional?

2. Whether a taxpayer may refuse to file a federal income tax return based on the claim that the requirement to do so violates the prohibition against self-incrimination contained in the Fifth Amendment to the U.S. Constitution?

FACTS

1. Taxpayer A is a United States citizen who resides in state X. A attended seminars on the federal tax system sponsored by S, an attorney. S made claims at these seminars that the federal income tax is unconstitutional because: (a) the Sixteenth Amendment to the U.S. Constitution, which authorizes a federal income tax, was not properly ratified by the states; (b) the federal income tax violates the due process clause of the Fifth Amendment to the U.S. Constitution; and (c) the payment of taxes is a form of involuntary servitude or slavery prohibited by the Thirteenth Amendment to the U.S. Constitution. Based on these constitutionally-based positions promoted by S, A filed a Form W-4, Employee's Withholding Allowance Certificate, with A's employer that claimed excess exemptions so that little or no federal income tax would be withheld from A's wages in 2004. Taxpayer A earned \$40,000 of taxable income in 2004. Relying on these constitutionally-based positions promoted by S, A did not file a federal income tax return for 2004.

2. Taxpayer B is a United States citizen who earned \$40,000 in taxable income in 2004. On B's 2004 Form 1040, federal income tax return, B wrote "Fifth Amendment privilege" on each line and did not report any taxable income for the year.

LAW AND ANALYSIS

The Sixteenth Amendment provides that Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration. U.S. CONST. amend. XVI. The United States Supreme Court has upheld the constitutionality of the income tax laws enacted subsequent to ratification of the Sixteenth Amendment.

Rcv. Rul. 2005-19

Page 3

Rev. Rul. 2005-19, 2005-14 I.R.B. 819, 2005 WL 583383 (IRS RRU), 2005-1 C.B. 819
(Publication page references are not available for this document.)

See, e.g., *Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1 (1916) (relying on the Sixteenth Amendment in holding that the income tax provisions of the Tariff Act of 1913 were not unconstitutional).

Promoters who claim that the federal income tax is unconstitutional often make frivolous arguments that there were defects in the ratification of the Sixteenth Amendment by the states. There are a number of variations on these frivolous arguments: (i) versions of the Amendment ratified by the states contained defects in spelling, punctuation, wording, or capitalization; (ii) state legislatures did not follow proper procedures in ratifying the amendment; (iii) state governors did not sign the amendment; (iv) one or more of the states that ratified the Amendment was not legally a state; and (v) the Amendment does not contain an enabling clause. These arguments have no merit, and courts have consistently rejected all challenges to the constitutionality of the federal income tax following enactment of the Sixteenth Amendment. See *Knoblauch v. Commissioner*, 749 F.2d 200, 201 (5th Cir. 1984) ("Every court that has considered this argument has rejected it."). Arguments to the contrary are frivolous.

The Fifth Amendment prevents the federal government from taking property without due process of law. U.S. CONST. amend. V. Due process generally includes a right to notice and an opportunity to be heard. The Supreme Court has held that the procedures contained in the Internal Revenue Code fully satisfy the due process rights of taxpayers. See *Phillips v. Commissioner*, 283 U.S. 589, 595-99 (1931) ("The right of the United States to collect its internal revenue by summary administrative proceedings has long been settled. Where, as here, adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained."). The argument that due process requires a hearing before tax has to be paid or can be withheld from wages is frivolous.

The federal income tax only requires payment of taxes on a person's income. It does not force a person to labor involuntarily, or to labor at all. The Thirteenth Amendment prohibits slavery and involuntary servitude, except as punishment when convicted of a crime. U.S. CONST. amend. XIII. The Thirteenth Amendment does not proscribe taxation. See *Abney v. Campbell*, 206 F.2d 836, 841 (5th Cir. 1953) (The specification, that the act violates the Thirteenth Amendment by imposing involuntary servitude upon an employer of domestic servants, seems to us far-fetched, indeed frivolous."). Moreover, a prison sentence for failing to file a federal income tax return is not prohibited by the Thirteenth Amendment. See *United States v. Drefke*, 707 F.2d 978, 983 (8th Cir. 1983) ("The Thirteenth Amendment, however, is inapplicable where involuntary servitude is imposed as punishment for a crime."). Failing to file a federal income tax return or to pay federal income tax based on the argument that it would constitute involuntary servitude is frivolous.

The Fifth Amendment provides that in a criminal case a person may not be compelled to be a witness against himself. U.S. CONST. amend. V. This generally means

Rev. Rul. 2005-19

Page 4

Rev. Rul. 2005-19, 2005-14 I.R.B. 819, 2005 WL 583383 (IRS RRU), 2005-1 C.B. 819

(Publication page references are not available for this document.)

that a person cannot be forced to answer a question if the answer will be used against that person in a criminal prosecution. Courts have routinely held, however, that the Fifth Amendment provides no basis for failing or refusing to file a tax return. *United States v. Stillhammer*, 706 F.2d 1072, 1076-77 (10th Cir.1983) ("[T]he Fifth Amendment does not serve as a defense for failing to make any tax return, and a return containing no information but a general objection based on the Fifth Amendment does not constitute a return as required by the Code."). The remote possibility that a taxpayer's statement on a tax return might be used as evidence in a future criminal prosecution will not relieve a taxpayer from the obligation to file a tax return and properly report income and pay tax due. See *California v. Byers*, 402 U.S. 424, 427-29 (1971) ("[T]he remote possibility of incrimination is insufficient to defeat strong policies of disclosure called for by" government regulatory scheme.). Additionally, involvement in illegal activities will not relieve a person of the duty to file a federal income tax return because income earned from illegal activities is subject to the federal income tax. *United States v. Sullivan*, 274 U.S. 259, 263-64 (1927) ("It would be an extreme if not an extravagant application of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime.").

CIVIL AND CRIMINAL PENALTIES

In determining the correct amount of tax due, the Service will include income that taxpayers attempt to exclude based on frivolous constitutional arguments. In addition to liability for tax due plus statutory interest, individuals who claim tax benefits on their returns based on these and other frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6651 additions to tax for failure to file a return, failure to pay the tax owed, and fraudulent failure to file a return; (2) the section 6662 accuracy-related penalty, which is equal to 20 percent of the amount of taxes the taxpayer should have paid; (3) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (4) a \$500 penalty under section 6702 for filing a frivolous return; and (5) a penalty of up to \$25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on these positions also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201, for which the penalty is a significant fine and imprisonment for up to 5 years; (2) willful failure to make a return or pay tax under section 7203, for which the penalty is a significant fine and imprisonment of up to 1 year; or (3) making false statements on a return under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years.

Persons, including return preparers, who promote these frivolous positions and those who assist taxpayers in claiming tax benefits based on these frivolous argu-

Rev. Rul. 2005-19

Page 5

Rev. Rul. 2005-19, 2005-14 I.R.B. 819, 2005 WL 583383 (IRS RRU), 2005-1 C.B. 819

(Publication page references are not available for this document.)

ments may face penalties and may be enjoined by a court pursuant to sections 7407 and 7408. Potential penalties include: (1) a \$250 penalty under section 6694 for each return prepared by an income tax preparer who knew or should have known that the taxpayer's argument was frivolous (or \$1,000 for each return if the return preparer's actions were willful, intentional or reckless); (2) a penalty under section 6700 for promoting abusive tax shelters; (3) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (4) criminal prosecution under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws.

HOLDINGS

1. The Sixteenth Amendment to the U.S. Constitution was properly ratified and authorizes the federal income tax. Filing a federal income tax return and paying federal income tax does not constitute the taking of property without due process of law under the Fifth Amendment to the U.S. Constitution. Filing a federal income tax return, paying federal income tax, and incarceration for failure to comply with federal income tax obligations is not involuntary servitude or slavery prohibited by the Thirteenth Amendment to the U.S. Constitution. Arguments to the contrary are frivolous.

2. A taxpayer may not properly refuse to file a federal income tax return based on the claim that the requirement to do so violates the prohibition against self-incrimination of the Fifth Amendment to the U.S. Constitution. Arguments to the contrary are frivolous.

DRAFTING INFORMATION

This revenue ruling was drafted by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-7950 (not a toll-free call).

Rev. Rul. 2005-19, 2005-14 I.R.B. 819, 2005 WL 583383 (IRS RRU), 2005-1 C.B. 819

END OF DOCUMENT

Westlaw.

T.C. Memo. 2007-298

Page 1

T.C. Memo. 2007-298, 2007 WL 2840522 (U.S. Tax Ct.), 94 T.C.M. (CCH) 346, T.C.M. (RIA) 2007-298, 2007 RIA

TC Memo 2007-298

(Cite as: T.C. Memo. 2007-298)

C

Schlosser v. C.I.R.

U.S. Tax Ct., 2007.

United States Tax Court.
James Kerr SCHLOSSER, Petitioner

v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 23356-06L.

Oct. 1, 2007.

Background: Taxpayer petitioned for review of notice of determination concerning collection action sustaining proposed levy and lien filing. IRS moved for summary judgment and to impose penalty.

Holdings: The Tax Court, Ruwe, J., held that:

(1) Court would uphold notice of determination, and

(2) taxpayer was liable for \$1,000 penalty.

Motions granted.

West Headnotes

[1] Internal Revenue 220 ⇌ 4655

220 Internal Revenue

220XXI Assessment of Taxes

220XXI(E) Review by Tax Court

220k4655 k. Trial or Hearing. Most Cited

Cases

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Tax Court Rule 121, 26 U.S.C.A. foll. § 7453.

[2] Internal Revenue 220 ⇌ 4655

220 Internal Revenue

220XXI Assessment of Taxes

220XXI(E) Review by Tax Court

220k4655 k. Trial or Hearing. Most Cited

Cases

The party moving for summary judgment bears the burden of proving that there is no genuine issue of material fact. Tax Court Rule 121, 26 U.S.C.A. foll. § 7453.

[3] Internal Revenue 220 ⇌ 4855

220 Internal Revenue

220XXV Collection

220XXV(B) Levy or Distraint

220k4855 k. In General. Most Cited Cases

Tax Court would uphold notice of determination concerning collection action sustaining proposed levy and lien filing; in petition and response to IRS's motion for summary judgment, taxpayer advanced nothing but frivolous and meritless arguments with respect to his underlying tax liability. 26 U.S.C.A. § 6330.

[4] Internal Revenue 220 ⇌ 5335

220 Internal Revenue

220XXXIV Costs and Fees

220k5332 Awards to Government

220k5335 k. Particular Proceedings. Most Cited Cases

Internal Revenue 220 ⇌ 5339

220 Internal Revenue

220XXXIV Costs and Fees

220k5332 Awards to Government

220k5339 k. Amount. Most Cited Cases

Taxpayer who petitioned for review of notice of determination concerning collection action sustaining proposed levy and lien filing was liable for \$1,000 penalty, as his position was frivolous and groundless and caused Tax Court to waste limited resources. 26 U.S.C.A. § 6673(a)(1).

James Kerr Schlosser, pro se.
Kristina L. Rico, for respondent.

© 2008 Thomson/West. No Claim to Orig. U.S. Govt. Works.

T.C. Memo. 2007-298

Page 2

T.C. Memo. 2007-298, 2007 WL 2840522 (U.S. Tax Ct.), 94 T.C.M. (CCH) 346, T.C.M. (RIA) 2007-298, 2007 RIA

TC Memo 2007-298

(Cite as: T.C. Memo. 2007-298)

MEMORANDUM OPINION

RUWE, Judge.

*1 This case is before the Court on respondent's motion for summary judgment and to impose a penalty under section 6673.^{FN1}

Background

Respondent sent to petitioner a Final Notice-Notice of Intent to Levy and Notice of Your Right to a Hearing and a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 with respect to unpaid tax that had previously been assessed for the 1994 tax year. Petitioner timely requested a hearing with respect to each notice.

In a letter dated August 17, 2006, acknowledging petitioner's hearing requests, respondent's Appeals officer advised petitioner that a telephonic hearing was scheduled for September 21, 2006, at 12:30 p.m. The letter advised petitioner that the issues raised in his hearing requests are those that courts have determined are frivolous. However, the Appeals officer advised petitioner that he would be allowed a face-to-face hearing on any relevant, nonfrivolous issue, or a hearing via correspondence, if petitioner appropriately requested such a hearing within 14 days. The letter also advised petitioner that if he desired to pursue alternative collection methods, he should provide a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and a signed tax return for the 2005 tax period. Petitioner did not call respondent at the scheduled time for the hearing, nor did he indicate in a timely fashion that such date and/or time was inconvenient.

On October 13, 2006, respondent's Appeals Office issued to petitioner a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 (notice of determination) sustaining the proposed levy and lien filing. Petitioner timely filed a petition with this Court to dispute the notice of determination relying on the following al-

leged facts:

a) The Federal Income Tax system for *individual tax purposes* is based upon a self-assessed system and is 100% voluntary [sic].

b) After self-assessment, the Petitioner had found that he had no federal tax liability for the calendar year 1994.

c) The Petitioner did file a Statement in lieu of a Federal Income Tax Form 1040.

d) The Petitioner is not required by Law to file a Tax Form 1040.

e) The Petitioner is an Inhabitant of Pennsylvania state/commonwealth, a Republic, one of the Fifty States of the Union, also known as, the united states of America.

f) The Petitioner is not self-employed or gainfully employed for that matter.

g) The Petitioner is not an agent, servant, officer, director, or employee of the government, nor is he subject to the Public Salary Tax Act of 1939.

h) The Petitioner is not required by Law to file any tax forms, as he has no income form [sic] 'any source derived therefrom' by legal definition indicated in the Code.

i) The Petitioner is not in the military.

j) The Petitioner is not subject to the jurisdiction of the United States a foreign corporation to the Fifty States of the Union, as evidenced in 28 U.S.C.A. §§ 3002(2) and (15)(A) and the Clearfield Doctrine.

*2 *The Clearfield Doctrine*. Wherein the United States Supreme Court held:

"Governments descend to the level of a mere private corporation, and take on the characteristics of a mere private citizen.... Where private corporate commercial paper [Federal Reserve Bank Notes], from a private Banking Corporation, known as the Fed] and securities [checks] is concerned for purposes of suit, such corporations are regarded as entities entirely separate from government." *Clearfield, supra*. (Emphasis added).

FN¹ Federal Reserve Bank Notes are 'obligations of the United States' (a for-

T.C. Memo. 2007-298

Page 3

T.C. Memo. 2007-298, 2007 WL 2840522 (U.S. Tax Ct.), 94 T.C.M. (CCH) 346, T.C.M. (RIA) 2007-298, 2007 RIA

TC Memo 2007-298

(Cite as: T.C. Memo. 2007-298)

eign corporation to the Fifty States of the Union), see 18 U.S.C.A. § 8. These Federal Reserve Bank Notes are not money, they merely circulate as a medium of exchange, they are deemed fiat money or flat money, 'worthless pieces of paper', as indicated in H.J.R. 192, June 5, 1933, this statement was made by Congressman McFadden from the state of Pennsylvania.

In another U.S. Supreme Court case, *United States v Burr*, 309 U.S. 242, 60 S.Ct. 488, 84 L.Ed. 724, the Court held:

"When governments enter the world of commerce, they are subject to the same burdens as any private firm or corporation."

k) The Petitioner has at all times acted in good faith in connection with his duties and obligations concerning tax matters. Therefore, the claim for penalties under the Code referenced above is misplaced.

l) The Petitioner has relied on his interpretation of the Law, the Tax Codes, and United States Supreme Court Decisions to form the basis of his decision making, therefore, there is no deliberate willfulness on his part to evade any tax or fail to file any tax alleged due and owing.

m) The Petitioner denies any claim that the Commissioner asserts that he owes any tax or penalty for the calendar year ending December 31, 1994, or any year for that matter.

n) The Petitioner has been irreparably harmed and injured in his reputation and good name by these false and erroneously [sic] accusations and his [sic] has incurred out-of-pocket expenses to dispute these claims asserted by the Commissioner.

Respondent has filed a motion for summary judgment in which he alleges that petitioner's position is based on frivolous allegations and arguments. In his motion, respondent also moves that this Court impose a penalty under section 6673 because petitioner has instituted these proceedings primarily for the purpose of delay and petitioner's position is frivolous and groundless. In response to

respondent's motion for summary judgment, petitioner relies on the same type of allegations and positions that were contained in his above-quoted petition.

Discussion

[1][2] Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. *Fla. Peach Corp. v. Commissioner*, 90 T.C. 678, 681, 1988 WL 31439 (1988). Summary judgment may be granted where there is no genuine issue of any material fact, and a decision may be rendered as a matter of law. Rule 121(a) and (b). The moving party bears the burden of proving that there is no genuine issue of material fact. *Dahlstrom v. Commissioner*, 85 T.C. 812, 821, 1985 WL 15413 (1985); *Nafstel v. Commissioner*, 85 T.C. 527, 529, 1985 WL 15396 (1985). When a motion for summary judgment is made and properly supported, the adverse party may not rest upon 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).

*3 [3] Section 6330(a) provides that no levy may be made on any property or right to property of any person unless the Secretary first notifies him or her in writing of the right to a hearing before the Appeals Office.^{FN2} At the hearing, a taxpayer may raise any relevant issues including appropriate spousal defenses, challenges to the appropriateness of collection actions, and offers of collection alternatives. Sec. 6330(c)(2)(A). Under certain circumstances, the person may also challenge the existence or amount of the underlying tax liability. Sec. 6330(c)(2)(B).

In *Lunsford v. Commissioner*, 117 T.C. 183, 185-186, 2001 WL 1521580 (2001), we stated:

Our Rules require petitioners to specify the facts upon which they rely for relief under section 6330. A petition filed under section 6330 must contain "Clear and concise lettered statements of the facts on which the petitioner bases each assignment

T.C. Memo. 2007-298

Page 4

T.C. Memo. 2007-298, 2007 WL 2840522 (U.S. Tax Ct.), 94 T.C.M. (CCH) 346, T.C.M. (RIA) 2007-298, 2007 RIA

TC Memo 2007-298

(Cite as: T.C. Memo. 2007-298)

of error". Rule 331(b)(5). * * *

Ct.), 94 T.C.M. (CCH) 346, T.C.M. (RIA)
2007-298, 2007 RIA TC Memo 2007-298

In the petition and the response to respondent's motion for summary judgment, petitioner has advanced nothing but frivolous and meritless arguments with respect to his underlying tax liability for 1994. We shall not painstakingly address petitioner's assertions "with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." *Crain v. Commissioner*, 737 F.2d 1417 (5th Cir.1984).

END OF DOCUMENT

On the basis of our review of the record, we conclude that there is no genuine issue as to a material fact. In the absence of a valid issue for review, we conclude that respondent is entitled to judgment as a matter of law and sustain respondent's collection actions.

[4]Section 6673(a)(1) authorizes this Court to require a taxpayer to pay to the United States a penalty not to exceed \$25,000 if the proceedings have been instituted or maintained by the taxpayer primarily for delay or the taxpayer's position is frivolous or groundless. Petitioner's position is frivolous and groundless and has caused this Court to waste limited resources. Accordingly, we hold that petitioner is liable for a \$1,000 penalty pursuant to section 6673(a).

To reflect the foregoing,

An appropriate order and decision will be entered.

FN1. Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

FN2. Similar hearing rights are provided to contest the filing of a Federal tax lien under sec. 6320.

U.S. Tax Ct., 2007.

Schlusser v. C.I.R.

T.C. Memo. 2007-298, 2007 WL 2840522 (U.S. Tax