

CAV Armen

UNITED STATES TAX COURT

WASHINGTON, DC 20217

BARON L. OLIVER,)
)
 Petitioner)
)
 v.)
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

Docket No. 14519-08L.

ADM.	
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DM	
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STAT.	
S.T. JUDGE	
Armen	
FILES	

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the hearing of the above case before Special Trial Judge Robert N. Armen, Jr. at Phoenix, Arizona on January 29, 2009, containing his oral findings of fact and opinion rendered at the conclusion of the hearing.

In accordance with the oral findings of fact and opinion, and Order and Decision will be entered for respondent.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Dated: Washington, D.C.
February 17, 2009

SERVED FEB 20 2009

1 Bench Opinion Thursday, January 29, 2009
2 By Special Trial Judge Robert N. Armen, Jr.
3 Oliver v. Commissioner Docket No. 14519-08L

4 THE COURT: The Court has decided to render oral
5 findings of fact and opinion in this case and the
6 following represents the Court's oral findings of fact
7 and opinion.

8 This proceeding was heard as a regular case
9 pursuant to the provisions of Section 7443A(b)(4) of
10 the Internal Revenue Code of 1986, as amended, and
11 Rules 180, 181, and 182 of the Tax Court Rules of
12 Practice and Procedure.

13 This bench opinion is made pursuant to the
14 authority granted by Section 7459(b) of the Internal
15 Revenue Code of 1986, as amended, and Rule 152 of the
16 Tax Court Rules of Practice and Procedure.

17 Hereinafter in this bench opinion, and unless
18 otherwise indicated, all section numbers refer to the
19 Internal Revenue Code of 1986, as amended, and all
20 rule numbers refer to the Tax Court Rules of Practice
21 and Procedure.

22 Baron L. Oliver appeared on his own behalf.
23 Ric D. Hulshoff appeared on behalf of Respondent.

24 This case is before the Court on
25 Petitioner's Motion For Summary Judgment, filed

1 October 28, 2008, pursuant to Rule 121, and
2 Respondent's Cross-Motion For Summary Judgment, filed
3 January 21, 2009, also pursuant to Rule 121.

4 This is a collection review case involving
5 the filing of a Notice of Federal Tax Lien for the
6 taxable year 1999. As discussed in detail below, we
7 shall deny Petitioner's motion and grant Respondent's
8 cross-motion.

9 The record may be summarized as follows:
10 Petitioner resided in the State of Arizona at the time
11 that the Petition was filed with the Court.

12 Petitioner's Liability: Notwithstanding an
13 extension of time to file, petitioner failed to file
14 timely a federal income tax return for 1999.
15 Accordingly, Respondent instituted "Substitute for
16 Return" procedures and ultimately sent Petitioner a
17 Notice of Deficiency. See Section 6212. Petitioner
18 did not commence an action for redetermination of
19 deficiency in this Court. See Section 6213(a).
20 Consequently, Respondent assessed the determined
21 deficiency, together with statutory interest and
22 applicable additions. Contemporaneously therewith,
23 Respondent sent Petitioner a "Statutory Notice of
24 Balance Due", i.e., Notice and Demand for Payment.
25 See Section 6303(a). Petitioner did not pay the

1 amount owing.

2 Federal Tax Lien: In January 2007,
3 Respondent filed a Notice of Federal Tax Lien, see
4 Section 6323, with the County Recorder of Maricopa
5 County in Phoenix, Arizona, reflecting Petitioner's
6 outstanding liability, which at that time totaled
7 \$16,622.59. Respondent also sent Petitioner a Notice
8 of Federal Tax Lien filing. See Section 6320(a).
9 Petitioner timely filed with Respondent a Form 12153,
10 Request for a Due Process Hearing. See Section
11 6320(a)(3)(B), (b)(1).

12 Administrative Hearing and Determination:
13 During the course of the administrative hearing,
14 Petitioner alleged that he had not actually received a
15 copy of the Notice of Deficiency. Respondent's
16 settlement officer was unable to negate that
17 allegation and so allowed Petitioner to challenge the
18 amount of his assessed liability. See Sections
19 6320(c), 6330(c)(2)(B).

20 Petitioner challenged his liability by
21 filing, in or about January 2008, a federal income tax
22 return (Form 1040) for 1999. On the return, which
23 Petitioner filed jointly with his spouse, Micka,
24 Petitioner reported a liability in an amount nearly
25 half of the amount originally determined by Respondent

1 in the Notice of Deficiency. However, Petitioner did
2 not full pay the self-reported amount.

3 Petitioner's late-filed return was accepted
4 by Respondent, and the settlement officer determined
5 that the outstanding assessment should be abated to
6 reflect Petitioner's self-reported liability. Steps
7 were taken to accomplish this task, but before those
8 steps were completed, Respondent's Office of Appeals
9 sent Petitioner a notice of determination in May 2008.

10 The Notice of Determination made clear that
11 Petitioner's late-filed return had been accepted by
12 Respondent and that the outstanding assessment would
13 be abated consistent with Petitioner's self-reported
14 liability. In the absence of a collection
15 alternative, the Notice of Determination also
16 determined that the federal tax lien would not be
17 withdrawn and that it would only be released upon
18 payment of Petitioner's outstanding liability, as
19 abated.

20 Upon receipt of the Notice of Determination,
21 Petitioner commenced an action in this Court. See
22 Section 6330(d)(1).

23 Judicial Proceeding: The abatement promised
24 by the settlement officer was, in fact, effected, and
25 Respondent's records were revised to reflect

1 Petitioner's tax liability consistent with his late-
2 filed return. However, Petitioner's self-reported
3 liability remains unsatisfied. Nevertheless,
4 Petitioner filed his Motion For Summary Judgment,
5 complaining that Respondent had failed to release or
6 withdraw the federal tax lien. Respondent's Cross-
7 Motion for Summary Judgment then followed. The
8 parties' motions were argued to the Court in Phoenix,
9 Arizona, on January 26, 2009.

10 Summary judgment is intended to expedite
11 litigation and avoid unnecessary and expensive trials.
12 Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681
13 (1988). Summary judgment may be granted with respect
14 to all or any part of the legal issues in controversy
15 "if the pleadings, answers to interrogatories,
16 depositions, admissions, and any other acceptable
17 materials, together with the affidavits, if any, show
18 that there is no genuine issue as to any material fact
19 and that a decision may be rendered as a matter of
20 law." Rule 121(a) and (b); Sundstrand Corp. v.
21 Commissioner, 98 T.C. 518, 520 (1992), affirmed 17
22 F.3d 965 (7th Cir. 1994).

23 Upon review of the record, we conclude that
24 there are no genuine issues of material fact and that
25 Respondent is entitled to judgment as a matter of law.

1 Section 6321 imposes a lien in favor of the
2 United States on all property and rights to property
3 of a person when demand for payment of that person's
4 liability for taxes has been made and the person fails
5 to pay those taxes. The lien arises when the
6 assessment is made. Section 6322. Section 6323(a)
7 requires the secretary to file notice of federal tax
8 lien if such lien is to be valid against any
9 purchaser, holder of a security interest, mechanic's
10 lienor, or judgment lien creditor. Behling v.
11 Commissioner, 118 T.C. 572, 575 (2002). Thus, a lien
12 is nothing other than a security device that assures
13 the Government of its priority over other possible
14 creditors. Elliott, Federal Tax Collections, Liens,
15 and Levies, paragraph 9.05 (2d edition 2005). Unlike
16 a levy, a lien does not deprive a taxpayer of
17 property. Id.; see also United States v. Whiting
18 Pools, Inc., 462 U.S. 198, 210-211 (1983).

19 In the instant case, Respondent is not
20 obliged to release the federal tax lien, and thereby
21 relinquish his priority vis-à-vis other potential
22 creditors of Petitioner, given the fact that
23 Petitioner's self-reported liability remains
24 unsatisfied. See Section 6325(a)(1). Nor is there
25 anything in the record to suggest that withdrawal of

1 the lien is warranted. See Section. 6323(j)(1);
2 Rule 121(d).

3 In sum, Petitioner has made no valid
4 challenge to the appropriateness of leaving the
5 federal tax lien in place, and his Motion for Summary
6 Judgment, filed October 28, 2008, will therefore be
7 denied. In contrast, Respondent is entitled to
8 judgment as a matter of law. Accordingly, we shall
9 grant Respondent's Cross-Motion for Summary Judgment,
10 filed January 21, 2009, and thereby sustain the
11 determination of Respondent's Appeals Office not to
12 withdraw or release the Notice of Federal Tax Lien
13 that was previously filed.

14 This concludes the Court's oral findings of
15 fact and opinion in this case.

16 (Whereupon, at 8:15 a.m., the bench opinion
17 in the above-entitled matter was concluded.)

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