



Mail Fraud Report

See Privacy Act Statement on Page 3

Complainant Information

Your Name <i>Chester-Evans; Davis for CHESTER E. DAVIS</i>		SSN*	Year of Birth*
Address <i>c/o Po Box 2176</i>			
City <i>CLACKAMAS</i>	State <i>OR</i>	ZIP Code <i>97015</i>	Country <i>USA</i>
Home Phone No. (Include Area Code)	Work Phone No. (Include Area Code) <i>503 655 5059 EXT 21</i>	E-Mail	

*These two fields are optional, but the information may be helpful to Postal Inspectors tracking your complaint. Also, penalties may increase when certain crimes target particular age groups.

Complaint Filed Against

Company Name <i>U.S. TAX COURT</i>		Person's Name and Title <i>DIANE L. KROUPA</i>	
Address <i>400 SECOND ST. N.W.</i>			
City <i>WASHINGTON D.C.</i>	State <i>D.C.</i>	ZIP Code <i>20217</i>	Country <i>UNITED STATES</i>
Home Phone No. (Include Area Code)	Work Phone No. (Include Area Code) <i>202 521 0700</i>	E-Mail	
Fax No. (Include Area Code)	Web Address		

Details of Mail Fraud Complaint

Did You Lose Money? <input checked="" type="checkbox"/> Yes. If so, how much? <i>≈\$200k</i> <input type="checkbox"/> No	What Was the Advertised Cost of the Offer?
How Did You Pay? (Check one)	Date of Payment
<input type="checkbox"/> Cash <input type="checkbox"/> Check <input type="checkbox"/> Postal Money Order <input type="checkbox"/> Electronic Transfer <input type="checkbox"/> Debit Card <input type="checkbox"/> Other Money Order <input type="checkbox"/> Credit Card <input type="checkbox"/> Telephone Bill	

Find the General Category Below that Describes Your Area of Concern, and Check the Specific Item. (Check one only)

- | | | |
|--|---|---|
| <p>Advance Payment</p> <input type="checkbox"/> Loan
<input type="checkbox"/> Credit Repair/Debt Consolidation
<input type="checkbox"/> Credit Card
<input type="checkbox"/> Student Loan
<input type="checkbox"/> Mortgage

<input type="checkbox"/> Chain Letter

<input type="checkbox"/> Charity Fraud

<p>Education</p> <input type="checkbox"/> School
<input type="checkbox"/> Degree

<p>Employment</p> <input type="checkbox"/> Postal Job
<input type="checkbox"/> Overseas Job
<input type="checkbox"/> Work at Home (Such as envelope stuffing)
<input type="checkbox"/> Distributorship/Multilevel Marketing | <p>False Bill or Notice</p> <input type="checkbox"/> Office Supplies
<input type="checkbox"/> Directory Solicitation
<input type="checkbox"/> Subscription/Periodical
<input type="checkbox"/> Classified Ad
<input type="checkbox"/> Taxes

<input type="checkbox"/> Harassment (Merchandise ordered in your name without your consent.)

<p>Investment</p> <input type="checkbox"/> Real Estate
<input type="checkbox"/> Gems, Coins, Precious Metals
<input type="checkbox"/> Securities

<p>Lottery (You pay to play.)</p> <input type="checkbox"/> Domestic
<input type="checkbox"/> Foreign

<p>Medical Quackery</p> <input type="checkbox"/> Weight Loss
<input type="checkbox"/> AIDS Cure
<input type="checkbox"/> Cancer Cure
<input type="checkbox"/> Sexual Aid | <p>Merchandise or Service</p> <input type="checkbox"/> Failure to Pay
<input type="checkbox"/> Failure to Provide
<input checked="" type="checkbox"/> Misrepresentation of Product/Service
<input type="checkbox"/> Nigerian Fraud

<p>Personals</p> <input type="checkbox"/> Mail-Order Bride
<input type="checkbox"/> Dating Service
<input type="checkbox"/> False Divorce Decree

<input type="checkbox"/> Prize or Sweepstakes

<input type="checkbox"/> Sexually Oriented Advertisement

<input type="checkbox"/> Vacation or Travel |
|--|---|---|

On What Date Did You Receive the Solicitation?

How Were You Contacted? (Check one)

U.S. Mail Newspaper Radio/TV Internet Fax
 Telephone Magazine In Person E-Mail Other

If by Mail, Do You Have the Envelope It Was Mailed in? Yes No Does the Envelope Have a Permit Number Instead of a Stamp?
 Yes; Permit No.: 000 420 2791 No

Does the Envelope Have a Postage Meter Number Instead of a Stamp? How Did You Respond to the Offer?
 Yes; Meter No.: _____ No U.S. Mail Telephone Internet E-Mail Fax

Do You Have a Mailing Receipt From Your Response (Such as for certified, insured or Express Mail)?
 Yes; Mail Receipt No.: 7007 0220 0001 7057 7796 No

To What Address Did You Mail Your Response?
U.S. TAX COURT - SAME AS ABOVE.

What Did You Receive?
FRAUDULENT ORDER

How Did It Differ From What You Expected?
UNSIGNED BY CLERK, NO SEAL, NO OATH OF OFFICE

Do You Have the Item? How Was It Delivered?
 Yes No U.S. Mail Private Courier In Person

Have You Contacted the Company or Person About the Complaint?
 Yes No. Why? Delivery Attempted, Returned Endorsed Disconnected Telephone
Date of Last Contact: 2/20/09 Moved, Left No Address Unlisted Telephone
 Unanswered Telephone Address Unavailable

Legitimate businesses appreciate feedback. Check the offer for the delivery time frame, usually 6 to 8 weeks, and then contact the company. Please wait 2 weeks after contacting them before sending us this form. When a delivery time is not specified, a Federal Trade Commission rule mandates fulfillment within 30 days, unless you applied for first-time credit with the company.

Additional Information You Feel Is Important

MAIL FRAUD - WHEN LETTERS OR ORDERS ARE SENT UNDER FRAUDULENT PRETEXT TO EXTORT MONEY, THIS IS A CRIMINAL ACT. MS. KROUPA SENT A FRAUDULENT ORDER LACKING A PROPER OATH OF OFFICE, IN VIOLATION OF 28 USC 1691 & 18 USC:1341

Print Your Name CHESTER E. DAVIS By [Signature] AUTHORIZED REP Today's Date 2/20/09

Thank you for completing this form. Please mail it with copies (not originals) of any bills, receipts, advertisements, canceled checks (front and back) or correspondence related to your report to the address below.

The U.S. Postal Inspection Service is a federal law enforcement agency. Postal Inspectors gather facts and evidence to determine whether a violation has occurred under the Mail Fraud or False Representation Statutes. While the Postal Inspection Service can't guarantee that you'll recover money lost to fraud, the information can help alert Inspectors about new fraud schemes and prevent others from being victimized.

Postal Inspectors base mail fraud investigations on the number, substance, and pattern of complaints received from the public; therefore, we ask you to keep all original documents relating to your complaint, including the solicitation, any mailing envelopes, and canceled checks. Under our Consumer Protection Program, Postal Inspectors may contact individuals or businesses on your behalf to request that complaints be resolved. We will contact you if more information is needed.

Postal Inspectors caution that, once you've been targeted in a fraud scheme, your name may be passed along to other con artists, so beware of future solicitations. If you know of others who believe they were

victimised in a fraud scheme, we recommend that you encourage them to submit a Mail Fraud Report as well.

Avoid being a victim: Postal Inspectors recommend that, before completing a business transaction, contact the Chamber of Commerce, Better Business Bureau, or county or state Office of Consumer Affairs in the area where the firm is located to get any information available on the company. If you have Internet access, you can get information from the Better Business Bureau online at: www.bbb.org, and from the individual state Attorneys General Consumer Protection Divisions at www.naag.org. Also, check the Postal Inspection Service Web site at: www.usps.gov/postalinspectors for more information on fraud schemes that involve the use of the mail.

Remember: If a deal sounds too good to be true, it probably is!

Please return this form to your postmaster, or mail to this address:

INSPECTION SERVICE SUPPORT GROUP
222 S RIVERSIDE PLAZA STE 1250
CHICAGO IL 60606-6100

UNITED STATES TAX COURT

WASHINGTON DC 20217

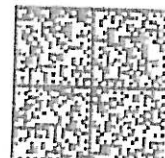
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL™



7004 1160 0000 2441 9362

ESA NW, Inc.
C/O Chester E. Davis
P.O. Box 2110
Clackamas, OR 97015



UNITED STATES POSTAGE
U.S. OFFICIAL MAIL
PENALTY FOR PRIVATE USE \$300
PRIMARY HOWES
\$ 03.290
02 1A
0004202791 FEB 18 2009
MAILED FROM ZIP CODE 20260

CERTIFIED MAIL

9701542110

UNITED STATES TAX COURT

WASHINGTON, DC 20217

ESA NW, INC.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 8903-06L
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This collection review matter is before the Court on Respondent's Motion for Summary Judgment And to Impose A Penalty Under I.R.C. § 6673¹ filed on December 1, 2008. Petitioner was given until January 12, 2009, in which to file a response or objection to respondent's motion. On January 15, 2009, petitioner submitted a document entitled Petitioner's Response to Respondent's Motion for Summary Judgment, which the Court filed as petitioner's response to respondent's motion. Based upon review of the entire record, we find that there is no genuine issue as to any material fact in this case, and we therefore shall grant respondent's motion.

Background

Petitioner late filed its Federal corporate income tax return (Form 1120) for 2001. Respondent sent to petitioner a Statutory Notice of Deficiency (Statutory Notice) proposing a deficiency and additions to tax. Petitioner did not pay the proposed deficiency amounts nor did it petition this Court for redetermination of the deficiency. Respondent then assessed the proposed deficiency for 2001 and sent petitioner a notice of balance due.

Respondent sent petitioner a Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320 (Lien Notice) on June 2, 2005, advising petitioner that a notice of Federal tax lien had been filed with respect to petitioner's unpaid balance for 2001 and advising petitioner that it could request a hearing

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

with respondent's Appeals Office. In response to the Lien Notice, petitioner timely requested a hearing under section 6330 (hearing). Petitioner's hearing request challenged the existence of the underlying tax liability. Petitioner also made numerous frivolous arguments, such as challenging the Internal Revenue Service (the IRS) to identify the statute making it liable to pay taxes, claiming that no valid assessment was ever made and claiming it had never received notice and demand for unpaid taxes.

The Appeals officer assigned to petitioner's case, Ms. Jean Duncan, reviewed petitioner's hearing request and advised petitioner that she would not offer a face-to-face hearing if petitioner's only arguments were frivolous or involved issues Appeals would not consider like objections based on moral or political grounds. Ms. Duncan also declined to work with petitioner's chosen representative, Mr. Jeffrey Hubacek, because he had been barred from representing taxpayers before the IRS. When petitioner requested a face-to-face hearing, Ms. Duncan advised petitioner that a face-to-face hearing would not be granted because petitioner had not identified relevant issues.

Appeals Officer Duncan and petitioner held a telephone hearing on January 25, 2006. Before the hearing, Ms. Duncan provided petitioner with a copy of Form 4340 for petitioner's tax liability for 2001.

At the hearing, petitioner failed to challenge the appropriateness of the proposed collection action or the accuracy or validity of the underlying liability for 2001. Nor did petitioner request a payment arrangement. Instead, petitioner requested copies of its "TC-150" and the statute that made it liable to pay income taxes. After the conference, Ms. Duncan sent petitioner a letter containing payoff amounts for all liabilities.

Without receiving anything from petitioner regarding any possible collection activities, Appeals Officer Duncan issued petitioner a Notice of Determination Concerning Collection Action Under Section 6320 on February 3, 2006 (the Determination Notice) determining that the proposed collection activity was appropriate regarding 2001. Petitioner timely filed a petition² with this Court challenging the Determination Notice. Petitioner asserts in the third amended petition that it did not receive the deficiency notice for 2001, rendering the assessment invalid, and

² Petitioner's principal place of business was Oregon at the time it filed its collection review petition.

asserting that the Appeals officer erred by not providing a face-to-face hearing.

As previously mentioned, respondent filed a Motion for Summary Judgment And to Impose A Penalty Under I.R.C. § 6673, and petitioner filed a response in which it reiterated similar arguments to those raised in the third amended petition.

Discussion

We must first decide whether 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, answers to interrogatories, depositions, admissions, and other acceptable materials, together with the affidavits, if any, 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).

A. Standard of Review

Where, as is the case here, the validity of the underlying tax liability is not properly placed at issue,³ the Court will review respondent's determination for abuse of discretion. See Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Based upon our

³The underlying liability for 2001 is not at issue because petitioner received a statutory notice and did not petition the Court for redetermination of the deficiency. Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Nor did petitioner raise any issues relating to the underlying tax liability for 2001 at the CDP hearing and is therefore similarly not before this Court. Sec. 301.6330-1(f)(2), Q&A-F5, *Proced. & Admin. Regs.* See also Jewett v. Commissioner, 292 F. Supp.2d 962, 967 (N.D. Ohio 2003); Loofbourrow v. Commissioner, 208 F. Supp. 2d 698, 706 (S.D. Tex. 2002). Moreover, even if petitioner could challenge the existence or amount of its tax liability for 2001, petitioner's arguments that it is not liable for Federal income taxes are frivolous and groundless. See secs. 1(a)(1), 61(a)(1), 7701(a)(1), (14); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981).

examination of the entire record before us, we find that there is no genuine issue of material fact at issue. We shall therefore grant summary judgment to respondent regarding petitioner's unpaid Federal income tax liability for 2001.

B. Petitioner's Arguments

Petitioner's grounds for disagreeing with the collection action is that it never received a face-to-face hearing. In addition, petitioner asserts that he did not receive proper notice and therefore the assessment is invalid. We will address each of these arguments in turn. In short, we find no merit to any of petitioner's assertions.

C. Face-to-Face Hearing

Petitioner asserts that he is entitled to a face-to-face hearing. We disagree. A CDP hearing may consist of one or more written or oral communications between an Appeals officer and the taxpayer. Sec. 301.6330-1, *Proced. & Admin. Regs.* This and other courts have held that face-to-face CDP hearings are not required under section 6330. Katz v. Commissioner, 115 T.C. 329 (2000) (taxpayer not entitled to face-to-face hearing; telephone conference procedurally proper); Leineweber v. Commissioner, T.C. Memo. 2004-17 (face-to-face hearing not required; prior telephone conversations constitute CDP hearing); Tilley v. United States, 270 F. Supp. 2d 731 (M.D.N.C. 2003) (face-to-face hearing not required; telephone conversations sufficed); Guy v. United States, 2002 WL 1732850 (E.D.N.Y. 2002) (IRS does not owe taxpayer a duty to hold a face-to-face CDP hearing). We also note that petitioner had a telephone hearing with Appeals Officer Duncan and, although petitioner may not have met face-to-face with the Appeals officer, it was due to its own making by refusing to raise any relevant issues. Accordingly, we conclude that it is not necessary or appropriate to either remand this case to the Appeals Office for another CDP hearing or reject respondent's determination to proceed with the collection action regarding petitioner's unpaid tax liabilities for 2001.

D. No Valid Deficiency Notice-No Valid Assessment

Petitioner also asserts that the deficiency notice issued to it by respondent was not valid for a variety of reasons, including that it was not signed by an authorized signer, and therefore, the assessment is invalid. Petitioner's assertion regarding the deficiency notice likewise fails. A valid deficiency notice need not be signed at all. Tavano v. Commissioner, 986 F.2d 1389, 1390 (11th Cir. 1993), *affg.* T. C. Memo. 1991-237; Commissioner v. Oswego Falls Corp., 71 F.2d 673, 677 (2d Cir. 1934); Perlmutter v. Commissioner, 44 T.C. 382, 399-

400 (1965), *affd.* 373 F.2d 45 (10th Cir. 1967); Urban v. Commissioner, T.C. Memo. 1991-220, *affd.* 964 F.2d 888 (9th Cir. 1992) (*per curiam*). Moreover, petitioner's argument that the deficiency notice was invalid because it was not signed by the Secretary or someone with delegated authority from the Secretary is itself frivolous and groundless. See Nestor v. Commissioner, 118 T.C. 162, 165-166 (2002).

E. No Valid Notice and Demand

Petitioner also asserts that no valid notice and demand was issued as required by section 6303. The Form 4340 that respondent provided to petitioner and that is part of the record shows that a notice of balance due was issued to petitioner on the same date that respondent entered an assessment against petitioner for the taxes and related liabilities set forth in the deficiency notice. We have held that a notice of balance due constitutes a notice and demand for payment within the meaning of section 6303(a). See, e.g., Hughes v. United States, 953 F.2d 531, 536 (9th Cir. 1992); Weishan v. Commissioner, T.C. Memo. 2002-88. Accordingly, we find that a notice and demand for payment was sent to petitioner regarding unpaid liabilities for 2001 in accordance with section 6303.

F. Other Arguments

Petitioner makes a number of generic, unsupported assertions in its amended petition, all of which we reject. We have repeatedly held that section 6330(c)(1) does not require the Appeals officer to rely on a particular form to satisfy the verification requirement imposed by that section, nor does it require the Appeals officer to provide a taxpayer a copy of the verification upon which the Appeals officer relied. Roberts v. Commissioner, 118 T.C. 365 n.10 (2002), *affd.* 329 F.3d 1224 (11th Cir. 2003); Nestor v. Commissioner, 118 T.C. 162, 166 (2002); Lunsford v. Commissioner, 117 T.C. 183 (2001); Davis v. Commissioner, 115 T.C. 35 (2000); Wagner v. Commissioner, T.C. Memo. 2002-190; Howard v. Commissioner, T.C. Memo. 2002-81; Mann v. Commissioner, T.C. Memo. 2002-48. Moreover, we have found that an Appeals officer may verify an assessment by means of a Form 4340. Standifird v. Commissioner, T.C. Memo. 2002-245; Holliday v. Commissioner, T.C. Memo. 2002-67. The 4340 contains all information necessary to record an assessment including identifying the taxpayer, the character of the liability assessed, the taxable period and the amount of the assessment. See sec. 301.6203-1, *Proced. & Admin. Regs.* The Appeals officer provided petitioner with a copy of Form 4340 for the taxable year at issue. In addition, the Form 4340 indicates that notice and demand for payment was made on the same day as the assessment was made. Accordingly, we find that respondent properly verified for

purposes of section 6330(c)(1) that all applicable laws and administrative procedures have been met. In cases indistinguishable from this one, summary judgment has been granted to respondent. See Roberts v. Commissioner, supra; Wagner v. Commissioner, supra; Perry v. Commissioner, T.C. Memo. 2002-165; Newman v. Commissioner, T.C. Memo. 2002-135; Coleman v. Commissioner, T.C. Memo. 2002-132; Williams v. Commissioner, T.C. Memo. 2002-111; Weishan v. Commissioner, T.C. Memo. 2002-88.

We also reject petitioner's assertion that it made an offer as a collection alternative when it offered to pay the liability once the Appeals officer showed it the law that requires payment of tax. This assertion lacks merit as it is based on the assumption that the Code does not require petitioner to pay taxes. This Court has found this argument to be frivolous. Holliday v. Commissioner, T.C. Memo. 2005-240; Tolotti v. Commissioner, T.C. Memo. 2002-86; Rowley v. Commissioner, 80 T.C. 1111 (1983).

G. Other Arguments

The remaining arguments petitioner raises are nothing more than tax protester rhetoric and legalistic gibberish. We do not address these type of arguments with somber reasoning and copious citations of precedent, as to do so might suggest that they possess some colorable merit. See Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984).

H. Summary of Argument Results

Petitioner has not alleged any irregularity in the assessment procedure that would raise a question about the validity of the assessments or the information contained in the transcripts of account. Moreover, petitioner has failed to raise a spousal defense, make a valid challenge to the appropriateness of respondent's intended collection action, or offer alternative means of collection. These issues are now deemed conceded. Rule 331(b)(4).

Based on the entire record in this case, we conclude that the Appeals officer did not abuse her discretion in determining that respondent could proceed with collection of petitioner's tax liabilities for 2001.

I. Penalty

We now address respondent's motion to impose a penalty against petitioner pursuant to 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. Section 6673(a)(1) applies to CDP proceedings. Pierson v. Commissioner, 115 T.C. 576 (2000); Hoffman v. Commissioner, T.C. Memo. 2000-198. In CDP proceedings, this Court has imposed a penalty when the underlying tax liability is not at issue and the taxpayer raised frivolous and groundless arguments with respect to the legality of the Federal tax laws. See, e.g., Roberts v. Commissioner, *supra*; Pierson v. Commissioner, *supra*; Hauck v. Commissioner, T.C. Memo. 2002-184; Perry v. Commissioner, *supra*; Newman v. Commissioner, *supra*; Williams v. Commissioner, *supra*; Yacksyzn v. Commissioner, T.C. Memo. 2002-99; Watson v. Commissioner, T.C. Memo. 2001-213; and Davis v. Commissioner, T.C. Memo. 2001-87.

In this proceeding now before the Court, the underlying tax liabilities are not at issue and petitioner asserts nothing but frivolous and groundless arguments. The arguments here are the same as made in a related case (ESA NW, Inc. v. Commissioner, Docket No. 8904-06L). Petitioner's principal, Mr. Chester Davis, is no stranger to this Court, and has been previously sanctioned for advancing the same universe of arguments advanced here. Davis v. Commissioner, T.C. Memo. 2007-160 (\$2,000 section 6673 penalty). 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 its proceeding in this Court is merely a continuation of petitioner's refusal to acknowledge and satisfy its tax obligations. We are convinced that no purpose would be served in repeating all that has been said about these frivolous and misguided arguments.

Despite being subject to a penalty in 2007, petitioner (through its principal) persisted and wasted this Court's limited time and resources.

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.

We are mindful that petitioner is representing itself (through its principal) and may not be familiar with all the Court's Rules and procedures. Pro se status, however, is not a license to litter the dockets of the Federal courts with

ridiculous allegations concerning the Code. Parker v. Commissioner, 117 F.3d 785 (5th Cir. 1997).

We therefore shall require petitioner to pay a penalty pursuant to section 6673(a)(1). In addition, we take this opportunity to admonish petitioner (and its principal) that the Court will consider imposing the largest penalty possible if petitioner (or its principal) returns to the Court and advances similar arguments in the future.

Accordingly, upon due consideration and for cause, it is

ORDERED that Respondent's Motion for Summary Judgment And to Impose A Penalty Under I.R.C. § 6673, filed December 1, 2008, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action as determined in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated February 3, 2006, for the taxable year 2001, upon which this case is based. It is further

ORDERED AND DECIDED that petitioner shall pay to the United States a penalty under section 6673 in the amount of \$15,000.

(Signed) Diane L. Kroupa

Diane L. Kroupa
Judge

ENTERED: **FEB 18 2009**

UNITED STATES TAX COURT

WASHINGTON, DC 20217

ESA NW, INC.,

Petitioner,

v.

Docket No. 8903-06L

COMMISSIONER OF INTERNAL REVENUE,

Respondent

ORDER AND DECISION

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REFUSED FOR CAUSES: LACK OF CLERK'S SEAL AND VIOLATES 18 U.S.C. SIGNATURE AND MAIL VERIFIED (SEE ATTACHED) (2011) MAIL VERIFIED (RTS)

with respondent's Appeals Office. In response to the Lien Notice, petitioner timely requested a hearing under section 6330 (hearing). Petitioner's hearing request challenged the existence of the underlying tax liability. Petitioner also made numerous frivolous arguments, such as challenging the Internal Revenue Service (the IRS) to identify the statute making it liable to pay taxes, claiming that no valid assessment was ever made and claiming it had never received notice and demand for unpaid taxes.

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asserting that the Appeals officer erred by not providing a face-to-face hearing.

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REFUSED TO PAY TAXES;
LACK OF CLERK'S AND VOLUNTARY
SIGNATURES AND U.S.C.
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examination of the entire record before us, we find that there is no genuine issue of material fact at issue. We shall therefore grant summary judgment to respondent regarding petitioner's unpaid Federal income tax liability for 2001.

B. Petitioner's Arguments

Petitioner's grounds for disagreeing with the collection action is that it never received a face-to-face hearing. In addition, petitioner asserts that he did not receive proper notice and therefore the assessment is invalid. We will address each of these arguments in turn. In short, we find no merit to any of petitioner's assertions.

C. Face-to-Face Hearing

Petitioner asserts that he is entitled to a face-to-face hearing. We disagree. A CDP hearing may consist of one or more written or oral communications between an Appeals officer and the taxpayer. Sec. 301.6330-1, Proced. & Admin. Regs. This and other courts have held that face-to-face CDP hearings are not required under section 6330. Katz v. Commissioner, 115 T.C. 329 (2000) (taxpayer not entitled to face-to-face hearing; telephone conference procedurally proper); Leineweber v. Commissioner, T.C. Memo. 2004-17 (face-to-face hearing not required; prior telephone conversations constitute CDP hearing); Tilley v. United States, 270 F. Supp. 2d 731 (M.D.N.C. 2003) (face-to-face hearing not required; telephone conversations sufficed); Guy v. United States, 2002 WL 1732850 (E.D.N.Y. 2002) (IRS does not owe taxpayer a duty to hold a face-to-face CDP hearing). We also note that petitioner had a telephone hearing with Appeals Officer Duncan and, although petitioner may not have met face-to-face with the Appeals officer, it was due to its own making by refusing to raise any relevant issues. Accordingly, we conclude that it is not necessary or appropriate to either remand this case to the Appeals Office for another CDP hearing or reject respondent's determination to proceed with the collection action regarding petitioner's unpaid tax liabilities for 2001.

D. No Valid Deficiency Notice-No Valid Assessment

Petitioner also asserts that the deficiency notice issued to it by respondent was not valid for a variety of reasons, including that it was not signed by an authorized signer, and therefore, the assessment is invalid. Petitioner's assertion regarding the deficiency notice likewise fails. A valid deficiency notice need not be signed at all. Tavano v. Commissioner, 986 F.2d 1389, 1390 (11th Cir. 1993), affg. T. C. Memo. 1991-237; Commissioner v. Oswego Falls Corp., 71 F.2d 673, 677 (2d Cir. 1934); Perlmutter v. Commissioner, 44 T.C. 382, 399-

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400 (1965), affd. 373 F.2d 45 (10th Cir. 1967); Urban v. Commissioner, T.C. Memo. 1991-220, affd. 964 F.2d 888 (9th Cir. 1992) (per curiam). Moreover, petitioner's argument that the deficiency notice was invalid because it was not signed by the Secretary or someone with delegated authority from the Secretary is itself frivolous and groundless. See Nestor v. Commissioner, 118 T.C. 162, 165-166 (2002).

E. No Valid Notice and Demand

Petitioner also asserts that no valid notice and demand was issued as required by section 6303. The Form 4340 that respondent provided to petitioner and that is part of the record shows that a notice of balance due was issued to petitioner on the same date that respondent entered an assessment against petitioner for the taxes and related liabilities set forth in the deficiency notice. We have held that a notice of balance due constitutes a notice and demand for payment within the meaning of section 6303(a). See, e.g., Hughes v. United States, 953 F.2d 531, 536 (9th Cir. 1992); Weishan v. Commissioner, T.C. Memo. 2002-88. Accordingly, we find that a notice and demand for payment was sent to petitioner regarding unpaid liabilities for 2001 in accordance with section 6303.

F. Other Arguments

Petitioner makes a number of generic, unsupported assertions in its amended petition, all of which we reject. We have repeatedly held that section 6330(c)(1) does not require the Appeals officer to rely on a particular form to satisfy the verification requirement imposed by that section, nor does it require the Appeals officer to provide a taxpayer a copy of the verification upon which the Appeals officer relied. Roberts v. Commissioner, 118 T.C. 365 n.10 (2002), affd. 329 F.3d 1224 (11th Cir. 2003); Nestor v. Commissioner, 118 T.C. 162, 166 (2002); Lunsford v. Commissioner, 117 T.C. 183 (2001); Davis v. Commissioner, 115 T.C. 35 (2000); Wagner v. Commissioner, T.C. Memo. 2002-190; Howard v. Commissioner, T.C. Memo. 2002-81; Mann v. Commissioner, T.C. Memo. 2002-48. Moreover, we have found that an Appeals officer may verify an assessment by means of a Form 4340. Standifird v. Commissioner, T.C. Memo. 2002-245; Holliday v. Commissioner, T.C. Memo. 2002-67. The 4340 contains all information necessary to record an assessment including identifying the taxpayer, the character of the liability assessed, the taxable period and the amount of the assessment. See sec. 301.6203-1, Proced. & Admin. Regs. The Appeals officer provided petitioner with a copy of Form 4340 for the taxable year at issue. In addition, the Form 4340 indicates that notice and demand for payment was made on the same day as the assessment was made. Accordingly, we find that respondent properly verified for

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SIGNED BY APPEALS OFFICER AND ATTACHED TO FORM 4340

purposes of section 6330(c)(1) that all applicable laws and administrative procedures have been met. In cases indistinguishable from this one, summary judgment has been granted to respondent. See Roberts v. Commissioner, *supra*; Wagner v. Commissioner, *supra*; Perry v. Commissioner, T.C. Memo. 2002-165; Newman v. Commissioner, T.C. Memo. 2002-135; Coleman v. Commissioner, T.C. Memo. 2002-132; Williams v. Commissioner, T.C. Memo. 2002-111; Weishan v. Commissioner, T.C. Memo. 2002-88.

We also reject petitioner's assertion that it made an offer as a collection alternative when it to offered to pay the liability once the Appeals officer showed it the law that requires payment of tax. This assertion lacks merit as it is based on the assumption that the Code does not require petitioner to pay taxes. This Court has found this argument to be frivolous. Holliday v. Commissioner, T.C. Memo. 2005-240; Tolotti v. Commissioner, T.C. Memo. 2002-86; Rowley v. Commissioner, 80 T.C. 1111 (1983).

G. Other Arguments

The remaining arguments petitioner raises are nothing more than tax protester rhetoric and legalistic gibberish. We do not address these type of arguments with somber reasoning and copious citations of precedent, as to do so might suggest that they possess some colorable merit. See Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984).

H. Summary of Argument Results

Petitioner has not alleged any irregularity in the assessment procedure that would raise a question about the validity of the assessments or the information contained in the transcripts of account. Moreover, petitioner has failed to raise a spousal defense, make a valid challenge to the appropriateness of respondent's intended collection action, or offer alternative means of collection. These issues are now deemed conceded. Rule 331(b)(4).

Based on the entire record in this case, we conclude that the Appeals officer did not abuse her discretion in determining that respondent could proceed with collection of petitioner's tax liabilities for 2001.

I. Penalty

We now address respondent's motion to impose a penalty against petitioner pursuant to 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

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been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless. Section 6673(a)(1) applies to CDP proceedings. Pierson v. Commissioner, 115 T.C. 576 (2000); Hoffman v. Commissioner, T.C. Memo. 2000-198. In CDP proceedings, this Court has imposed a penalty when the underlying tax liability is not at issue and the taxpayer raised frivolous and groundless arguments with respect to the legality of the Federal tax laws. See, e.g., Roberts v. Commissioner, *supra*; Pierson v. Commissioner, *supra*; Hauck v. Commissioner, T.C. Memo. 2002-184; Perry v. Commissioner, *supra*; Newman v. Commissioner, *supra*; Williams v. Commissioner, *supra*; Jacksyzn v. Commissioner, T.C. Memo. 2002-99; Watson v. Commissioner, T.C. Memo. 2001-213; and Davis v. Commissioner, T.C. Memo. 2001-87.

In this proceeding now before the Court, the underlying tax liabilities are not at issue and petitioner asserts nothing but frivolous and groundless arguments. The arguments here are the same as made in a related case (ESA NW, Inc. v. Commissioner, Docket No. 8904-06b). Petitioner's principal, Mr. Chester Davis, is no stranger to this Court, and has been previously sanctioned for advancing the same universe of arguments advanced here. Davis v. Commissioner, T.C. Memo. 2007-160 (\$2,000 section 6673 penalty). 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 its proceeding in this Court is merely a continuation of petitioner's refusal to acknowledge and satisfy its tax obligations. We are convinced that no purpose would be served in repeating all that has been said about these frivolous and misguided arguments.

Despite being subject to a penalty in 2007, petitioner (through its principal) persisted and wasted this Court's limited time and resources.

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.

We are mindful that petitioner is representing itself (through its principal) and may not be familiar with all the Court's Rules and procedures. Pro se status, however, is not a license to litter the dockets of the Federal courts with

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ridiculous allegations concerning the Code. Parker v. Commissioner, 117 F.3d 785 (5th Cir. 1997)

We therefore shall require petitioner to pay a penalty pursuant to section 6673(a)(1). In addition, we take this opportunity to admonish petitioner (and its principal) that the Court will consider imposing the largest penalty possible if petitioner (or its principal) returns to the Court and advances similar arguments in the future.

Accordingly, upon due consideration and for cause, it is ORDERED that Respondent's Motion for Summary Judgment And to Impose A Penalty Under I.R.C. § 6673, filed December 1, 2008, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action as determined in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated February 3, 2006, for the taxable year 2001, upon which this case is based. It is further

ORDERED AND DECIDED that petitioner shall pay to the United States a penalty under section 6673 in the amount of \$15,000.

(Signed) Diane L. Kroupa

Diane L. Kroupa
Judge

ENTERED: FEB 18 2009

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NOTICE AND DEMAND FOR
EXHIBITION OF MISSING CREDENTIALS

TO: Diane L. Kroupa
c/o United States Tax Court
400 Second Street, N.W.
Washington 20217
DISTRICT OF COLUMBIA, USA

FROM: Paul Andrew Mitchell, B.A., M.S.
Private Attorney General
c/o 501 W. Broadway, Suite A-332
San Diego 92101
CALIFORNIA, USA

DATE: August 27, 2007 A.D.

SUBJECT: missing credentials

Greetings Diane L. Kroupa:

Please be advised that a proper request submitted under the Freedom of Information Act ("FOIA") has resulted in a determination that the following requisite credentials for you cannot be found or exhibited by the legal custodians of those records:

- (1) Presidential Commission
- (2) Oath of Office
- (3) Appointment Affidavit
- (4) Senate Confirmation

As of October 1, 2004 A.D., a proper SUBPOENA IN A CIVIL CASE was overdue for your Oath Office and Appointment Affidavit.

For your convenience, we have attached pertinent documentation.

Formal demand is hereby made of you to produce all missing credentials as itemized above no later than 5:00 p.m. on Friday, September 28, 2007 A.D. Beyond that reasonable deadline, your silence will activate estoppel pursuant to Carmin v. Bowen, and it will also constitute fraud pursuant to U.S. v. Tweel.

Thank you for your timely and professional consideration.

Sincerely yours,

/s/ Paul Andrew Mitchell

Paul Andrew Mitchell, B.A., M.S.
Private Attorney General, 18 U.S.C. 1964(a)

NOTICE AND DEMAND FOR
EXHIBITION OF MISSING CREDENTIALS

TO: Joel Gerber
c/o United States Tax Court
400 Second Street, N.W.
Washington 20217
DISTRICT OF COLUMBIA, USA

FROM: Paul Andrew Mitchell, B.A., M.S.
Private Attorney General
c/o 501 W. Broadway, Suite A-332
San Diego 92101
CALIFORNIA, USA

DATE: August 27, 2007 A.D.

SUBJECT: missing credentials

Greetings Joel Gerber:

Please be advised that a proper request submitted under the Freedom of Information Act ("FOIA") has resulted in a determination that the following requisite credentials for you cannot be found or exhibited by the legal custodians of those records:

- (1) Presidential Commission
- (2) Oath of Office
- (3) Appointment Affidavit
- (4) Senate Confirmation

As of October 1, 2004 A.D., a proper SUBPOENA IN A CIVIL CASE was overdue for your Oath Office and Appointment Affidavit.

For your convenience, we have attached pertinent documentation.

Formal demand is hereby made of you to produce all missing credentials as itemized above no later than 5:00 p.m. on Friday, September 28, 2007 A.D. Beyond that reasonable deadline, your silence will activate estoppel pursuant to Carmine v. Bowen, and it will also constitute fraud pursuant to U.S. v. Tweel.

Thank you for your timely and professional consideration.

Sincerely yours,

/s/ Paul Andrew Mitchell

Paul Andrew Mitchell, B.A., M.S.
Private Attorney General, 18 U.S.C. 1964(a)

NOTICE AND DEMAND FOR
EXHIBITION OF MISSING CREDENTIALS

TO: John O. Colvin
c/o United States Tax Court
400 Second Street, N.W.
Washington 20217
DISTRICT OF COLUMBIA, USA

FROM: Paul Andrew Mitchell, B.A., M.S.
Private Attorney General
c/o 501 W. Broadway, Suite A-332
San Diego 92101
CALIFORNIA, USA

DATE: August 27, 2007 A.D.

SUBJECT: missing credentials

Greetings John O. Colvin:

Please be advised that a proper request submitted under the Freedom of Information Act ("FOIA") has resulted in a determination that the following requisite credentials for you cannot be found or exhibited by the legal custodians of those records:

- (1) Presidential Commission
- (2) Oath of Office
- (3) Appointment Affidavit
- (4) Senate Confirmation

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Thank you for your timely and professional consideration.

Sincerely yours,

/s/ Paul Andrew Mitchell

Paul Andrew Mitchell, B.A., M.S.
Private Attorney General, 18 U.S.C. 1964(a)