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UNITED STATES TAX COURT
WASHINGTON, DC 20217

ANTHONY DWAYNE WILLIAMS & T'ESHEKA RENYELL YOUNG,	)	
Petitioner(s),	)	
v.	)	Docket No. 26670-17 L.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

ORDER AND DECISION

This case was commenced on December 26, 2017, under section 6330[1] in response to notices of determination, all dated November 22, 2017, concerning proposed collection actions for petitioners' Federal income tax liabilities for tax years 2012 and 2013 and for frivolous tax submission penalties under section 6702 for returns and other filings for 2012 and 2013. Although the notices covered two tax years, petitioners challenged respondent's determinations for 2012 in this case, and challenged respondent's determinations for 2013 in a companion case at docket no. 26671-17L filed on the same day. On December 3, 2018, we ordered that the two cases be consolidated for purposes of trial, briefing and opinion.

On August 7, 2019, respondent filed a Motion for Summary Judgment along with a Declaration of Appeals Officer Andrew S. Ostos (AO Ostos), to which petitioners objected on September 13, 2019. The two consolidated cases are set for trial at the New Orleans, Louisiana trial calendar on October 7, 2019.

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[1] Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended, in effect for the relevant years. Rule references are to the Tax Court Rules of Practice and Procedure. All monetary amounts are rounded to the nearest dollar.

The undisputed facts are as follows:

Petitioners timely filed their joint Form 1040, U.S. Individual Income Tax Return for tax year 2012, self-reporting an income tax liability of $8,156, withholding of $15,505, and a credit of $7,349. They then filed a joint Form 1040X, Amended U.S. Individual Income Tax Return for 2012 on July 10, 2014. Their 2012 Form 1040X reduced their taxable income to zero and requested a refund for the remaining $8,156 in withholdings.

Petitioners also timely filed their joint Form 1040 for tax year 2013, self-reporting an income tax liability of zero, withholding of $15,508, and a credit of $15,508. They then filed a joint Form 1040X for 2013 on July 29, 2014. Their 2013 Form 1040X increased their withholdings by $3,390 and requested a total refund of $18,898.

Respondent examined petitioners' 2012 and 2013 tax returns, determined deficiencies in tax and penalties under section 6662(a) for each, and issued notices of deficiency for both years on October 20, 2014. Petitioners did not file a petition in this Court challenging the determinations so respondent assessed the deficiencies and additions to tax.

Respondent also deemed petitioners' 2012 Form 1040X and 2013 Form 1040 and Form 1040X to be frivolous and assessed one frivolous tax submission penalty under 6702(a) for 2012 and four separate penalties for 2013 against Mr. Williams. The record includes one Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, addressed to Mr. Williams, and bearing a signature dated September 7, 2016, that lists one frivolous tax return violation for 2013 under section 6702(a), described as "Frivolous Tax Return - Form 1040X Dated 06022016", and the following remarks "ARG 44 FRV RETURN TO 525 LTR X REF [XXX-XX-XXXX]" and "Signature Date 07252014", which date corresponds to the date shown on petitioners' 2013 Form 1040X. The record also includes a Form 4340, Certificate of Assessments, Payments and Other Specified Matters, showing assessment of section 6702 penalties on February 16, 2015, in the amount of $10,000, and January 18, 2016, and October 10, 2016, each in the amount of $5,000.

Respondent issued to each petitioner a Notice of Intent to Levy and Notice of Your Right to a Hearing, dated May 22, 2017, with respect to their tax liabilities for 2012 and 2013 (tax liability levy notices). Respondent issued Mr. Williams a

Notice LT11, also dated May 22, 2017, with respect to the single frivolous tax submission penalty for 2012 and the four separate penalties for 2013 (frivolous penalty levy notice). On June 12, 2017, respondent timely received from petitioners a Form 12153, Request for a Collection Due Process or Equivalent Hearing, in which petitioners offered frivolous arguments and indicated they were not interested in collection alternatives.

AO Ostos responded to petitioners' Form 12153 with two Substantive Contact Letters, both dated September 15, 2017, that (1) scheduled a telephonic hearing on October 17, 2017, concerning the tax liability levy notices and the frivolous penalty levy notice, (2) requested a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and completed Forms 1040 for 2014, 2015, and 2016, and (3) warned petitioners that one or more of their positions raised in their Form 12153 was frivolous and could subject them to additional penalties.

Petitioners did not submit the requested information before the scheduled telephonic hearing. AO Ostos called petitioners on October 17, 2017, for the scheduled telephonic hearing. During the hearing, petitioners continued to offer frivolous arguments and were not interested in collection alternatives. AO Ostos warned petitioners that the Court might impose penalties under section 6673 if they presented frivolous arguments to the Court.

After the hearing, petitioners sent AO Ostos a letter, dated November 17, 2017, which again offered frivolous arguments and indicated they were not interested in collection alternatives. They did not include any of the requested information with their letter. After receiving no additional information other than petitioners' letters, respondent issued three notices of determination, all dated November 22, 2017: (1) to Mr. Williams upholding the tax liability levy notice; (2) to Mrs. Williams upholding the tax liability levy notice; and (3) to Mr. Williams upholding the frivolous penalty levy notice.

Analysis

Rule 121(b) provides in part that after a motion for summary judgment and an opposing response are filed "[a] decision shall thereafter be rendered if the pleadings * * * and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Summary judgment is

intended to expedite litigation and avoid unnecessary and expensive trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988).

We have reviewed respondent's motion and the documents submitted in support thereof and petitioners' response. We are satisfied that, viewing facts in the light most favorable to petitioners, for the reasons summarized below, respondent is entitled to a decision as a matter of law on all issues remaining after respondent's concessions.

Where the validity of the underlying tax liability is in issue, the Court reviews the Commissioner's determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Where the validity of the underlying tax liability is not properly in issue, the Court will review the settlement officer's administrative determination for abuse of discretion. Sego v. Commissioner, 114 T.C. 604, 610 (2000). The settlement officer must verify that the requirements of any applicable law or administrative procedure have been met, consider issues properly raised by the taxpayer, and consider whether the collection action balances the need for the efficient collection of taxes with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary. Secs. 6320(b) and (c), 6330(b), (c)(3).

A taxpayer may raise the underlying liability at a hearing if he did not receive a notice of deficiency or otherwise have an opportunity to dispute his tax liability. Sec. 6330(c)(2)(B). If a notice of deficiency is properly mailed to the taxpayer at the taxpayer's last known address, the notice is valid even if the taxpayer did not receive it. See, e.g., United States v. Zolla, 724 F.2d 808, 810 (9th Cir. 1984). As part of the settlement officer's determination, he must verify that a valid notice of deficiency was issued to the taxpayer at the taxpayer's last known address. Sec. 6330(c)(1); Jordan v. Commissioner, 134 T.C. 1, 12 (2010); Hoyle v. Commissioner, 131 T.C. 197, 200 (2008). But even if the notice was properly mailed, the taxpayer may be able to challenge the underlying liability if the taxpayer can establish that no notice was received. Hoyle v. Commissioner, 131 T.C. at 199; Sego v. Commissioner, 114 T.C. at 609; Snodgrass v. Commissioner, T.C. Memo. 2016-235, at *14.

1. Tax Liability Levy Notices

Petitioners do not dispute receiving the notices of deficiency, but rather challenge respondent's tax liability levy notices with frivolous arguments and claim that respondent failed to verify that all applicable procedures were followed.

Petitioners' frivolous arguments have been rejected repeatedly by this and other courts. See, e.g., Wilcox v. Commissioner, T.C. Memo. 1987-225 (rejecting contentions that wages are not income and payment of taxes is voluntary for American citizens as frivolous), aff'd, 848 F.2d 1007 (9th Cir. 1988); Charczuk v. Commissioner, T.C. Memo. 1983-433 (rejecting the contention that the income tax is invalid as a matter of law as frivolous), aff'd, 771 F.2d 471 (10th Cir. 1985); Knelman v. Commissioner, T.C. Memo. 2000-268 (rejecting the contention that business income was not taxable gross income as frivolous), aff'd, 33 F. App'x 346 (9th Cir. 2002); see also Greenberg's Express, Inc. V. Commissioner, 62 T.C. 324 (1974) (holding that we do not look behind the notice of deficiency to question the procedures the Commissioner followed leading up to the issuance of the notice). We therefore will not dignify them further by analyzing each specific point in turn. Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.").

We now consider whether the settlement officer abused his discretion in sustaining the proposed collection actions. In his motion, respondent states that he was unable to verify compliance with the procedural requirements of section 6751(b)(1) for the penalties he determined under section 6662(a) for either 2012 or 2013. See sec. 7491(c); Graev v. Commissioner (Graev III), 149 T.C. 485, 492-493 (2017) supplementing and overruling our prior opinion in part Graev v. Commissioner (Graev II), 147 T.C. 460 (2016). Section 6751(b)(1) requires the Commissioner to show that the initial determination of certain penalties was "personally approved (in writing) by the immediate supervisor of the individual making such determination". See sec. 6751(b)(1); Graev III, 149 T.C. at 493; see also Chai v. Commissioner, 851 F.3d 190 (2d Cir. 2017) aff'g in part, rev'g in part T.C. Memo. 2015-42; Clay v. Commissioner, 152 T.C. __, __ (slip op. at 44) (April 24, 2019). Therefore, respondent concedes those penalties on procedural grounds.

As to the remaining underlying deficiencies, the record establishes that AO Ostos (1) verified that the requirements of any applicable law and administrative procedure were followed; (2) considered the issues petitioners raised; and (3) properly balanced the need for the efficient collection of taxes with petitioners' legitimate concern that any collection action be no more intrusive than necessary. We therefore will sustain respondent's two notices of determination to proceed with the collection action for petitioners' underlying tax liabilities for 2012 and 2013, but not the section 6662(a) penalties assessed for those years.

2. Frivolous Penalty Levy Notice

Section 6702(a)(1) imposes a $5,000 penalty on a taxpayer for filing a frivolous return and section 6702(b) imposes a $5,000 penalty for frivolous positions asserted in "specified frivolous submissions". Respondent concedes that Mr. Williams had no prior opportunity to challenge these penalties; therefore, he was entitled to a de novo review of respondent's determination. Goza v. Commissioner, 114 T.C. at 181-182 (2000); see also Pohl v. Commissioner, T.C. Memo. 2013-291 (holding that a taxpayer can dispute his liability for a section 6702 penalty because he would not have received a notice of deficiency before assessment of that penalty).

The Commissioner bears the burden of showing supervisory approval for the frivolous tax submission penalty under section 6702. See Kestin v. Commissioner, 153 T.C. __, __ (slip op. at 14) (August 29, 2019). The record includes a penalty approval form for one section 6702(a) penalty that is signed and dated September 7, 2016, which preceded assessment of one of the section 6702(a) penalties tied to petitioners' 2013 Form 1040X. Respondent concedes that he has not met his burden under section 6751(b) as to the remaining four section 6702 penalties, including the section 6702 penalty assessed for 2012. Therefore we will not sustain respondent's notice of determination for this penalty.

No genuine issues of material fact are in dispute, and no other challenges to the notices of determination on which this case is based have been properly raised. We therefore will grant respondent's motion for summary judgment subject to respondent's concessions noted above.

We warned petitioners previously that the Court can impose penalties of up to $25,000 under section 6673 for frivolous arguments or groundless positions and we advised them that their positions in this case appeared to fit this description. They persisted even after our warning but they also raised an issue (verification) that respondent conceded in part. We therefore will not impose a penalty under section 6673 but we again warn them that penalties are likely in the future if they keep taking these positions.

Upon due consideration and for cause, it is hereby

ORDERED that respondent's Motion for Summary Judgment, filed August 7, 2019, is granted. It is further

ORDERED AND DECIDED that respondent's notice of determination dated November 22, 2017, to Mr. Williams upholding respondent's proposed collection action as to petitioners' tax deficiencies for 2012 is sustained and as to section 6662(a) penalties for 2012 is not sustained. It is further

ORDERED AND DECIDED that respondent's notice of determination dated November 22, 2017, to Mrs. Williams upholding respondent's proposed collection action as to petitioners' tax deficiencies for 2012 is sustained and as to section 6662(a) penalties for 2012 is not sustained. It is further

ORDERED AND DECIDED that respondent's notice of determination dated November 22, 2017, to Mr. Williams upholding respondent's determination as to a frivolous tax submissions penalty under section 6702 for 2012 is not sustained.

Cary Douglas Pugh
Judge

ENTERED: **SEP 30 2019**

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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We have reviewed respondent's motion and the documents submitted in support thereof and petitioners' response. We are satisfied that, viewing facts in the light most favorable to petitioners, for the reasons summarized below, respondent is entitled to a decision as a matter of law on all issues remaining after respondent's concessions.

Where the validity of the underlying tax liability is in issue, the Court reviews the Commissioner's determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Where the validity of the underlying tax liability is not properly in issue, the Court will review the settlement officer's administrative determination for abuse of discretion. Sego v. Commissioner, 114 T.C. 604, 610 (2000). The settlement officer must verify that the requirements of any applicable law or administrative procedure have been met, consider issues properly raised by the taxpayer, and consider whether the collection action balances the need for the efficient collection of taxes with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary. Secs. 6320(b) and (c), 6330(b), (c)(3).

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1. Tax Liability Levy Notices

Petitioners do not dispute receiving the notices of deficiency, but rather challenge respondent's tax liability levy notices with frivolous arguments and claim that respondent failed to verify that all applicable procedures were followed. Petitioners' frivolous arguments have been rejected repeatedly by this and other courts. See, e.g., Wilcox v. Commissioner, T.C. Memo. 1987-225 (rejecting contentions that wages are not income and payment of taxes is voluntary for

American citizens as frivolous), aff'd, 848 F.2d 1007 (9th Cir. 1988); Charczuk v. Commissioner, T.C. Memo. 1983-433 (rejecting the contention that the income tax is invalid as a matter of law as frivolous), aff'd, 771 F.2d 471 (10th Cir. 1985); Knelman v. Commissioner, T.C. Memo. 2000-268 (rejecting the contention that business income was not taxable gross income as frivolous), aff'd, 33 F. App'x 346 (9th Cir. 2002); see also Greenberg's Express, Inc. V. Commissioner, 62 T.C. 324 (1974) (holding that we do not look behind the notice of deficiency to question the procedures the Commissioner followed leading up to the issuance of the notice). We therefore will not dignify them further by analyzing each specific point in turn. Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.").

We now consider whether the settlement officer abused his discretion in sustaining the proposed collection actions. In his motion, respondent states that he was unable to verify compliance with the procedural requirements of section 6751(b)(1) for the penalties he determined under section 6662(a) for either 2012 or 2013. See sec. 7491(c); Graev v. Commissioner (Graev III), 149 T.C. 485, 492-493 (2017) supplementing and overruling our prior opinion in part Graev v. Commissioner (Graev II), 147 T.C. 460 (2016). Section 6751(b)(1) requires the Commissioner to show that the initial determination of certain penalties was "personally approved (in writing) by the immediate supervisor of the individual making such determination". See sec. 6751(b)(1); Graev III, 149 T.C. at 493; see also Chai v. Commissioner, 851 F.3d 190 (2d Cir. 2017) aff'g in part, rev'g in part T.C. Memo. 2015-42; Clay v. Commissioner, 152 T.C. __, __ (slip op. at 44) (April 24, 2019). Therefore, respondent concedes those penalties on procedural grounds.

As to the remaining underlying deficiencies, the record establishes that AO Ostos (1) verified that the requirements of any applicable law and administrative procedure were followed; (2) considered the issues petitioners raised; and (3) properly balanced the need for the efficient collection of taxes with petitioners' legitimate concern that any collection action be no more intrusive than necessary. We therefore will sustain respondent's two notices of determination to proceed with the collection action for petitioners' underlying tax liabilities for 2012 and 2013, but not the section 6662(a) penalties assessed for those years.

2. Frivolous Penalty Levy Notice

Section 6702(a)(1) imposes a $5,000 penalty on a taxpayer for filing a frivolous return and section 6702(b) imposes a $5,000 penalty for frivolous positions asserted in "specified frivolous submissions". Respondent concedes that Mr. Williams had no prior opportunity to challenge these penalties; therefore, he was entitled to a de novo review of respondent's determination. Goza v. Commissioner, 114 T.C. at 181-182 (2000); see also Pohl v. Commissioner, T.C. Memo. 2013-291 (holding that a taxpayer can dispute his liability for a section 6702 penalty because he would not have received a notice of deficiency before assessment of that penalty).

The Commissioner bears the burden of showing supervisory approval for the frivolous tax submission penalty under section 6702. See Kestin v. Commissioner, 153 T.C. __, __ (slip op. at 14) (August 29, 2019). The record includes a penalty approval form for one section 6702(a) penalty that is signed and dated September 7, 2016, which preceded assessment of one of the section 6702(a) penalties tied to petitioners' 2013 Form 1040X. Petitioners have not argued that this penalty was not properly approved. We hold therefore that respondent has met his burden under section 6751(b) as to this penalty. Mr. Williams raised only frivolous arguments at the administrative hearing and before us challenging this penalty and therefore has not properly disputed his underlying liability for it. See sec. 6330(c)(4)(B) (providing that the settlement officer cannot consider frivolous positions); see also Pohl v. Commissioner, T.C. Memo. 2013-291. We also conclude that petitioners' 2013 Form 1040X is frivolous, and again decline to respond to petitioners' voluminous arguments as to why it is not. See Kestin, 153 T.C. __, __ (slip op. at 14); see also Wnuck v. Commissioner, 136 T.C. 498 (2011). Respondent concedes that he has not met his burden under section 6751(b) as to the remaining section 6702 penalties.

Mr. Williams identified no abuse of discretion by the settlement officer as to his review of the section 6702 penalty assessed on October 10, 2016, nor did we in our review of the record. We therefore will sustain respondent's notice of determination to proceed with collection as to the section 6702 penalty assessed on October 10, 2016, for petitioners' 2013 Form 1040X but not as to the remaining three penalties for 2013.

No genuine issues of material fact are in dispute, and no other challenges to the notices of determination on which this case is based have been properly raised. We therefore will grant respondent's motion for summary judgment subject to respondent's concessions noted above.

We warned petitioners previously that the Court can impose penalties of up to $25,000 under section 6673 for frivolous arguments or groundless positions and we advised them that their positions in this case appeared to fit this description. They persisted even after our warning but they also raised an issue (verification) that respondent conceded in part. We therefore will not impose a penalty under section 6673 but we again warn them that penalties are likely in the future if they keep taking these positions.

Upon due consideration and for cause, it is hereby

ORDERED that respondent's Motion for Summary Judgment, filed August 7, 2019, is granted. It is further

ORDERED AND DECIDED that respondent's notice of determination dated November 22, 2017, to Mr. Williams upholding respondent's proposed collection action as to petitioners' tax deficiencies for 2013 is sustained and as to section 6662(a) penalties for 2013 is not sustained. It is further

ORDERED AND DECIDED that respondent's notice of determination dated November 22, 2017, to Mrs. Williams upholding respondent's proposed collection action as to petitioners' tax deficiencies for 2013 is sustained and as to section 6662(a) penalties for 2013 is not sustained. It is further

ORDERED AND DECIDED that respondent's notice of determination dated November 22, 2017, to Mr. Williams upholding respondent's determination as to frivolous tax submissions penalties under section 6702 is sustained as the penalty for 2013 assessed on October 10, 2016, and is not sustained as to the remaining three penalties for 2013.

Cary Douglas Pugh
Judge

ENTERED: **SEP 30 2019**

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ANTHONY DWAYNE WILLIAMS & T'ESHEKA RENYELL YOUNG, ET AL.,	)	
Petitioner(s),	)	
v.	)	Docket No. 26670-17 L, 26671-17 L.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

ORDER

These cases were set for trial at the Court's December 3, 2018, New Orleans, Louisiana trial session. When the parties appeared at the call of these cases from the calendar, petitioners made an oral motion for continuance to which respondent did not object. We took that motion under advisement and ordered status reports from the parties to allow petitioners an opportunity to give their cases a fresh look. That fresh look has not resulted in progress but given the passage of time we will grant the motion to continue and retain jurisdiction. We now will address the other filings by petitioners.

On February 11, 2019, petitioners filed a "Statement Tender of Payment in Full (Conditional Offer of Acceptance)". That filing reflects arguments that we have deemed frivolous and, in any event, has no legal effect so we will not address it further.

On March 24, 2019, petitioners filed a Motion to Restrain Assessment or Collection or to Order Refund of Amount Collected in Dkt. No. 26670-17L, to which respondent filed a response on May 1, 2019. At issue in that motion is a collection action taken against petitioner T'esheka R. Young regarding a civil penalty for 2012. Respondent argues in his response that the Notice of Determination in this case addressed petitioners' income tax liability for 2012 and petitioner Anthony Dwayne Williams's civil penalty for 2012, but not Ms.

Young's civil penalty. Because Ms. Young's civil penalty is not before this Court, we will deny petitioners' motion.

On April 22, 2019, petitioners filed a Motion for Summary Judgment expressing their intention to move for summary judgment. On May 6, 2019, they filed another Motion for Summary Judgment indicating that they would file their formal motion by May 14, 2019. And on May 15, 2019, they filed their formal Motion for Summary Judgment. We will file the May 6 and May 15 motions as supplements to the original and consider them all together.

Our review of these filings, and the ones that precede them, confirms to us that petitioners continue to raise only frivolous arguments against respondent's proposed collection actions. The arguments they offer in support of their position are incomplete, misleading and misguided, and we will not dignify them further by analyzing each specific point in turn. Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit."). Petitioners have not stated a basis for granting summary judgment on any of the issues before the Court (the appropriateness of respondent's determinations for 2012 and 2013 noted above). Therefore we will deny their Motion for Summary Judgment because it raises only frivolous arguments.

Finally, when we continued these cases from the December trial session we warned petitioners that the arguments they were raising were frivolous, and they indicated their willingness to work with respondent's counsel to resolve these cases. That has not happened. We warn petitioners that the Court may impose penalties under I.R.C. sec. 6673 for frivolous arguments or groundless positions of up to $25,000. If they do not abandon their frivolous positions, especially after we granted their oral motion for continuance in these cases on the basis of their representation that they would reconsider their positions, they are increasing the risk that we will impose a penalty under I.R.C. sec. 6673 in the future. Because the parties have not been able to resolve these cases, we will set them for trial.

Upon due consideration and for cause, it is hereby

ORDERED petitioners' oral Motion for Continuance, made December 3, 2018, is granted and these cases are continued. It is further

ORDERED that jurisdiction of these cases is retained by this Division of the Court. It is further

ORDERED that petitioners' Motion to Restrain Assessment or Collection or to Order Refund of Amount Collected, filed March 24, 2019, in Dkt. No. 26670-17L, is denied. It is further

ORDERED that petitioners' Motion for Summary Judgment, filed May 6, 2019, at entry # 30, is retitled petitioners' "First Supplement to Motion for Summary Judgment". It is further

ORDERED that petitioners' Motion for Summary Judgment, filed May 15, 2019, at entry #31, is retitled petitioners' "Second Supplement to Motion for Summary Judgment". It is further

ORDERED that petitioners' Motion for Summary Judgment, file April 22, 2019, as supplemented, May 6, 2019, and May 15, 2019, is denied. It is further

ORDERED that these cases are set for trial at the Court's October 7, 2019, New Orleans, Louisiana trial session schedule to commence at 10:00 a.m. in Room 212, U.S. Custom House, 423 Canal Street, New Orleans, LA 70130. It is further

ORDERED that the Clerk of the Court shall attach to the copies of this Order served on the parties a copy of the Court's Standing Pretrial Order for the October, 7, 2019, New Orleans, Louisiana trial session.

Cary Douglas Pugh
Judge

Dated: Washington, D.C.
June 17, 2019

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ANTHONY DWAYNE WILLIAMS & T'ESHEKA RENYELL YOUNG, ET AL.,	)	
Petitioner(s),	)	
v.	)	Docket No. 26670-17 L, 26671-17 L.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

ORDER

These cases were set for trial at the Court's December 3, 2018, New Orleans, Louisiana trial session. When the parties appeared at the call of these cases from the calendar, petitioners made an oral motion for continuance to which respondent did not object. We took that motion under advisement and ordered status reports from the parties to allow petitioners an opportunity to give their cases a fresh look. That fresh look has not resulted in progress but given the passage of time we will grant the motion to continue and retain jurisdiction. We now will address the other filings by petitioners.

On February 11, 2019, petitioners filed a "Statement Tender of Payment in Full (Conditional Offer of Acceptance)". That filing reflects arguments that we have deemed frivolous and, in any event, has no legal effect so we will not address it further.

On March 24, 2019, petitioners filed a Motion to Restrain Assessment or Collection or to Order Refund of Amount Collected in Dkt. No. 26670-17L, to which respondent filed a response on May 1, 2019. At issue in that motion is a collection action taken against petitioner T'esheka R. Young regarding a civil penalty for 2012. Respondent argues in his response that the Notice of Determination in this case addressed petitioners' income tax liability for 2012 and petitioner Anthony Dwayne Williams's civil penalty for 2012, but not Ms.

Young's civil penalty. Because Ms. Young's civil penalty is not before this Court, we will deny petitioners' motion.

On April 22, 2019, petitioners filed a Motion for Summary Judgment expressing their intention to move for summary judgment. On May 6, 2019, they filed another Motion for Summary Judgment indicating that they would file their formal motion by May 14, 2019. And on May 15, 2019, they filed their formal Motion for Summary Judgment. We will file the May 6 and May 15 motions as supplements to the original and consider them all together.

Our review of these filings, and the ones that precede them, confirms to us that petitioners continue to raise only frivolous arguments against respondent's proposed collection actions. The arguments they offer in support of their position are incomplete, misleading and misguided, and we will not dignify them further by analyzing each specific point in turn. Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit."). Petitioners have not stated a basis for granting summary judgment on any of the issues before the Court (the appropriateness of respondent's determinations for 2012 and 2013 noted above). Therefore we will deny their Motion for Summary Judgment because it raises only frivolous arguments.

Finally, when we continued these cases from the December trial session we warned petitioners that the arguments they were raising were frivolous, and they indicated their willingness to work with respondent's counsel to resolve these cases. That has not happened. We warn petitioners that the Court may impose penalties under I.R.C. sec. 6673 for frivolous arguments or groundless positions of up to $25,000. If they do not abandon their frivolous positions, especially after we granted their oral motion for continuance in these cases on the basis of their representation that they would reconsider their positions, they are increasing the risk that we will impose a penalty under I.R.C. sec. 6673 in the future. Because the parties have not been able to resolve these cases, we will set them for trial.

Upon due consideration and for cause, it is hereby

ORDERED petitioners' oral Motion for Continuance, made December 3, 2018, is granted and these cases are continued. It is further

ORDERED that jurisdiction of these cases is retained by this Division of the Court. It is further

ORDERED that petitioners' Motion to Restrain Assessment or Collection or to Order Refund of Amount Collected, filed March 24, 2019, in Dkt. No. 26670-17L, is denied. It is further

ORDERED that petitioners' Motion for Summary Judgment, filed May 6, 2019, at entry # 30, is retitled petitioners' "First Supplement to Motion for Summary Judgment". It is further

ORDERED that petitioners' Motion for Summary Judgment, filed May 15, 2019, at entry #31, is retitled petitioners' "Second Supplement to Motion for Summary Judgment". It is further

ORDERED that petitioners' Motion for Summary Judgment, file April 22, 2019, as supplemented, May 6, 2019, and May 15, 2019, is denied. It is further

ORDERED that these cases are set for trial at the Court's October 7, 2019, New Orleans, Louisiana trial session schedule to commence at 10:00 a.m. in Room 212, U.S. Custom House, 423 Canal Street, New Orleans, LA 70130. It is further

ORDERED that the Clerk of the Court shall attach to the copies of this Order served on the parties a copy of the Court's Standing Pretrial Order for the October, 7, 2019, New Orleans, Louisiana trial session.

Cary Douglas Pugh
Judge

Dated: Washington, D.C.
June 17, 2019

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60804

ANTHONY DWAYNE WILLIAMS, T'ESHKA RENYELL YOUNG,

Petitioners - Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee

Appeal from the United States Tax Court
Tax Court Case No. 26670-17L
Tax Court Case No. 26671-17L

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Ignoring the Sixteenth Amendment, appellants argue that an income tax on their wages is unconstitutional. What we said years ago in rejecting the appeal of a tax protestor still rings true: "We perceive no need to refute these arguments 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, 1417 (5th Cir. 1984). Moreover, appellants were not allowed to challenge their underlying tax liability in the collection due

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

process hearing because they had previously received notices of deficiency for the tax years at issue but did not dispute that tax liability. I.R.C. § 6330(c)(2)(B). Although Anthony Williams could challenge the imposition of his frivolous-return penalty in the due process hearing—he did not receive a deficiency notice for that penalty or otherwise have an earlier opportunity to contest, that penalty was proper. *See* I.R.C. § 6702(a), 2(A) (allowing a penalty of $5,000 if the person files an incorrect return "based on a position which the Secretary has identified as frivolous"). As we noted at the outset, Williams's position that he did not receive wages because he was a "non-federal worker" paid by a private employer is frivolous. And the Commissioner has recognized it as such. IRS Notice 2010-33(III)(7) (citing Revenue Ruling 2006-18).

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60804

ANTHONY DWAYNE WILLIAMS; T'ESHEKA RENYELL YOUNG,

Petitioners - Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee

Appeal from a Decision of the
United States Tax Court

ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion 4/16/2020 , 5 Cir., _____ , _____ F.3d _____)

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having

voted in favor, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/Gregg J. Costa
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60804

ANTHONY DWAYNE WILLIAMS; T'ESHEKA RENYELL YOUNG,

Petitioners - Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee

Appeal from a Decision of the
United States Tax Court

O R D E R :

(**X**) The Appellants' opposed motion for stay of the mandate pending petition for writ of certiorari is DENIED.

Gregg Costa

GREGG J. COSTA
UNITED STATES CIRCUIT JUDGE