



United States Tax Court

Washington, DC 20217

LARRY MICHAEL WELENC,

Petitioner

v.

Docket No. 6103-20.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

ORDER AND DECISION

The petition in this case was filed July 10, 2020, and purported to seek relief under Internal Revenue Code Section 6404(e)(1). The petition listed a hodgepodge of complaints and attached various correspondence indicating petitioner's longtime disputes with the Internal Revenue Service (IRS).

The case is now before the Court on respondent's Motion for Summary Judgment filed October 15, 2021. That motion laid out the history of petitioner's tax account for 2009 and 2018. The year 2009 was the subject of Docket No. 21295-11, in which a decision now final was entered in the amount of \$517. Efforts to collect the deficiency by levy commenced in 2016. Petitioner responded with a series of letters and other writings complaining about the IRS and the Judge who entered the decision in Docket No. 21295-11 against petitioner. After an exchange of correspondence, petitioner's account was placed in "currently not collectible" status. Collection efforts resumed in 2018, but the account was again placed in "currently not collectible" status.

In January 2019, petitioner paid \$517 to his account and requested that the accrued interest and penalty be abated. In May 2019, the IRS informed petitioner that the late payment penalty had been abated but that the interest could not be abated because "there was no unreasonable error or delay relating to the performance of a ministerial or managerial act." Petitioner then claimed not only abatement of interest but a refund of the \$517 he had previously paid.

At the time of respondent's Motion for Summary Judgment, the balance assessed for 2009 in petitioner's account was \$201.88. In a document entitled "Response to Answer Brief" filed in this case on April 26, 2021, petitioner continues to challenge the 2009 decision on the merits. He also indicated that, after application

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of a refund claimed by petitioner for a later year, the remaining interest in dispute is \$25.88.

Notwithstanding the small amount in dispute, petitioner has filed a series of meritless motions in this case. An example is his Motion to Compel Discovery, filed May 26, 2022, which was denied because petitioner had failed to abide by rules setting out the prerequisites for such a motion. Other examples are two Motion(s) to Clarify Order, in which he essentially argues with the Court. It is unnecessary to recount the unfortunate history of this case in further detail to resolve the pending Motion for Summary Judgment.

On May 25, 2022, petitioner was directed to file a response to respondent's Motion for Summary Judgment on or before June 24, 2022. On May 28, 2022, he filed a Motion to Extend Time to respond to the Motion for Summary Judgment. In his motion, petitioner referred to a case that he intended to take to the Supreme Court with a filing deadline of June 17, 2022. He also stated:

If the respondent were to agree to clear Petitioner's account and admit that the issue in his 2011 tax case of which this case is and extension, specifically tax liability on Annuities of the owner and the Annuitant was a legitimate issue as the previous Judge before Judge Nega determined in denying the Respondent's Motion for summary Judgment and that Judge Nega was wrong in threatening the Appellant with a fine up to \$25,000 if he found Appellant's Response to the Respondent's Second Motion for Summary Judgment which he allowed and to which Petitioner did not respond for that reason, Petitioner would agree to drop this Petition.

In locating the other case referred to in petitioner's Motion to Extend Time, *Welenc v. DOJ, et al*, Docket No. 20-5025 in the United States Court of Appeals for the District of Columbia Circuit, we observed that on May 27, 2022, the Court of Appeals denied a motion "to clarify" and ordered that "The Clerk is directed to accept no further filings from appellant [petitioner here] in this closed case." We infer that petitioner's filings in the Court of Appeals parallel a similar pattern of vexatious filings in this case.

On May 31, 2022, petitioner filed what he characterizes as an "Interim" Reply to Motion for Summary Judgment. On June 7, 2022, the Court extended petitioner's time for response to July 6, 2022. No further response has been received. At no time has petitioner identified a ministerial or managerial error that would justify abatement of interest under Section 6404(e). He is simply using this case to complain about and attack collaterally the now final judgment in Docket No. 21295-11. Upon due consideration and for cause, it is hereby

ORDERED that petitioner's Motion to Clarify Order filed June 7, 2022, is denied, It is further

ORDERED that respondent's Motion for Summary Judgment filed October 15, 2021, is granted, and it is determined as a matter of law that petitioner is not entitled to abatement of interest on his account for 2009.

(Signed) Mary Ann Cohen
Judge



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ORDER

On July 11, 2022, the Court entered its Order and Decision. On July 12, 2022, petitioner filed a Motion for Reconsideration of Order. On July 13, 2022, petitioner filed a Statement in Support of Motion for Reconsideration. By Order served July 14, 2022, petitioner's Motion for Reconsideration was denied.

On July 14, 2022, petitioner filed a Motion for New Trial. On July 17, 2022, petitioner filed a Motion to Vacate, and on July 18, 2022, petitioner filed a First Amended Motion to Vacate.

Petitioner in his motions refers selectively to proceedings in his prior case, docket No. 21295-11, which commenced on September 14, 2011, and closed by an Order and Decision entered December 8, 2014. During the course of that case, petitioner was warned about making ex-parte calls to various departments of the Court and of the applicability of a penalty of up to \$25,000 for frivolous arguments. Yet he made multiple post-decisions filings that led to revocation of his e-filing privileges by Order of October 26, 2015. He resumed frivolous filings in 2019 and was ordered not to submit any more documents without leave of Court for good cause. A similar pattern is noticed in his filings in the Court of Appeals for the District of Columbia.

By contrast, his interim response to respondent's motion for summary judgment continued to reargue the prior case. Petitioner was given an extension of time to submit a further response but failed to do so even though he was given notice that failure to do so would be deemed consent to the relief sought by the motion. Thus, petitioner failed to establish by an appropriate response that there was a genuine issue of *material* fact or that respondent is not entitled to judgment as a matter of law.

Petitioner also refers selectively to the Tax Court Rules of Practice and Procedure. Rule 121(b) specifically incorporates Rule 50. Rule 50(b)(1) and (3) make clear that neither a hearing nor a trial date is required before the Court acts on a

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motion. Indeed, the purpose of summary judgment is to expedite litigation and avoid unnecessary trials. *Fla. Peach Corp. v. Commissioner*, 90 T.C. 678, 681 (1988).

In the prior case, the presiding Judge was conducting a trial session at the time and place set for the hearing and trial.

The trial date previously set in this case was continued generally at petitioner's request. There is no session in his chosen place of trial currently pending.

For the foregoing reasons, petitioner's post decision motions lack merit. If petitioner continues to impose unduly on the Court's time and resources, we will consider all available sanctions. He may file a notice of appeal. Upon due consideration and for cause, it is hereby

ORDERED that petitioner's Motion for a New Trial filed July 14, 2022, is denied. It is further

ORDERED that petitioner's Motion to Vacate filed July 17, 2022, as amended on July 18, 2022, is denied.

**(Signed) Mary Ann Cohen
Judge**

**Additional material
from this filing is
available in the
Clerk's Office.**