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Ignoring IRS notice of deficiency may leave taxpayer with no recourse for contesting tax liability

20 NOVEMBER 2014

CATEGORY:
ARTICLE

The US Tax Court recently held in *Onyango v. Comm'r* 142 T.C. 24 (2014) that a taxpayer could not contest a tax liability prior to making payment where the Internal Revenue Service (IRS) issued a valid Notice of Deficiency and the taxpayer failed to take advantage of previous opportunities to dispute the tax. In this case, the taxpayer argued that he was entitled to judicial review in Tax Court of the underlying tax liability because he had not received the Notice of Deficiency, but the Court found the taxpayer had been warned the notice was going to be issued, had failed to check his post office box on a regular basis, and usually disregarded and rarely opened the bills he received. The Court held that the taxpayer could not decline to retrieve his mail when he was reasonably able and had multiple opportunities to do so, and then later contend that did not receive, for purposes of Internal Revenue Code IRC Sect. 6330©(2)(B), a notice of deficiency. Because the IRS had issued a valid notice of deficiency, the Taxpayer had an earlier opportunity to respond and contest the underlying tax. The Taxpayer's failure to respond to the Notice of Deficiency precluded him from contesting the underlying tax after the issuance of a Notice of Determination by IRS Appeals in a Collection Due Process hearing.

Taxpayers who disagree with a proposed tax assessment by the IRS have various procedural opportunities to contest the tax before the IRS may seize assets to satisfy the liability. Most proposed assessments result from an examination of a taxpayer's return. At the conclusion of a tax audit, if the IRS has determined a deficiency in income or estate and gift tax, the IRS may issue a Statutory Notice of Deficiency under IRC Sect. 6212(a) notifying the taxpayer of the deficiency without having to pay the disputed assessment. If the taxpayer disagrees with the proposed tax, the taxpayer is afforded 90 days to contest the assessment by filing a petition with the Tax Court for a redetermination of the deficiency. If the taxpayer fails to respond within the statutory 90-day period, the IRS will immediately assess the tax, and may proceed to initiate enforced collection procedures, including the filing of a Notice of Federal Tax Lien and/or a Proposed Notice of Levy.

Liens and levy notices give taxpayers a second opportunity to respond to the tax assessment. Taxpayers are entitled to request a Collection Due Process (CDP) Hearing before an independent IRS Appeals Officer in response to a lien or levy notice, so long as the request is filed within 30 days from receiving the notice. The IRS is prohibited from continuing with the proposed collection action unless the 30-day period expires with no response from the taxpayer. Although the CDP hearing is primarily intended to review the appropriateness of the collection action or to consider collection alternatives, in certain circumstances the Appeals Officer will review the underlying tax liability, where the Taxpayer has not previously had an opportunity to dispute the tax. If the Appeals Officer reviews the underlying tax liability, but ultimately sustains the tax, the Taxpayer has one final procedural opportunity to appeal that determination by filing a petition to the Tax Court.

Summary

The lesson of the *Onyango* case is simple — a Statutory Notice of Deficiency might provide a taxpayer with his only opportunity to dispute a proposed tax liability prior to paying the tax in full, and therefore shouldn't be ignored. If the deadline for responding to a notice expires, the tax will be assessed, and the taxpayer may have little to no recourse for contesting efforts to collect the tax. See article in this newsletter by Seth Cohen on Abatement of Penalties in relation to International Information Returns.