

The following motion brought before the United States Tax Court brought the Court and the IRS to a complete standstill. The case is still pending.

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UNITED STATES TAX COURT

JOHN DOE
Petitioner

v. Docket No. 10911-03

CIR
Respondent

PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND
BRIEF SUPPORTING

Petitioner moves pursuant to tax court rule 121 moves this Court for summary adjudication in Petitioner's favor and against the Commissioner's Notice of Deficiency. The Commissioner makes request for interest and penalty that is based on its claims that Petitioner did not file tax return form 1040 U.S. Individual Income Tax Return with OMB number 1545-0074, timely. As a result of this claim, the Commissioner requests that the interest should be calculated beginning on the date the claim returns were due to be filed and that the interest should be calculated based upon the information those returns should have reported to the IRS. Petitioner does not dispute that he had income during the years in question and has admitted as much to Respondent.

The Penalty the Commissioner asks for is also based on a request this Court find that Petitioner willfully failed to file a form 1040 U.S. Individual Income Tax Return with OMB number 1545-0074 for the years in question.

As this Court directed in its order dated December 13, 2004, the Commissioner's admissions to Petitioner's Request for Admissions have been filed with this Court and made a part of the record in this case. They also are public admissions.

For the reasons that is is clear both parties believe Petitioner was not required to file any form 1040 U.S. Individual Income Tax Return with OMB control number 1545-0074, this Court should enter an order in favor of Petitioner and against the Commissioner as to the increase in tax, interest and penalty requests.

For the reasons stated below, Petitioner request this Court enter an order of summary adjudication dismissing the Notice of Deficiency as it was not issued according to any stated legal authority granting summary judgment in Petitioner's favor.

The CIR has admitted that Petitioner has filed a 1040 U.S. Individual Income Tax Return with the OMB number 1545-0074. Respondent also does not deny that the 1040 U.S. Individual Income Tax Return has maintained the same approval number for over 20 years.

Where Petitioner and the Commissioner first disagree is on whether the 1040 U.S. Individual Income Tax Return is a "request for information form."

The Commissioner states in its “admissions” that “I do not concede that a form 1040 is a ‘request for information.’” *Admission @ 1*. In responding to a request by Petitioner that section 6012 of the IRC “only” requires the submission of a “1040 request for information form” if Petitioner’s “gross income” exceed the “Congressionally assigned “exemption amount” the Commissioner stated again that it “Denies that a Form 1040 is a ‘request for information.’”

To settle this dispute, whether the Form 1040 is a “request for information” subject to the PRA [Paper Reduction Act], Petitioner directs this Court to decisions by the 10th Circuit Court of Appeals as well as the Supreme Court. The Supreme Court stated in *Dole v. Steelworkers*, 494 U.S. 26 (1990) that:

“Typical information collection requests include *tax forms*, Medicare forms, financial loan applications, job applications, questionnaires, compliance reports, and tax or business records. See S. Rep., at 3-4.”

@33

In *U.S. v. Dawes*, 951 F.2d 1189 (10th Cir. 1991) the Tenth Circuit stated three statements that should resolve this issue in favor of Petitioner. They said:

“The 1040 form is the information collection request which arguably must comply with the PRA. It is through the 1040 form that the government obtains all of the tax information it requires.”

“They are subsidiary to and mere administrative appendages of the tax form. They function only to aid the taxpayer in providing the information required by the 1040 form.”

“As long as the 1040 form complies with the Act, nothing more is required.”

Yet, the Commissioner denies the Form 1040 is a “request for information.” There can be no doubt that the Form 1040 U.S. Individual Income Tax Return is a “request for information” by the United States and as such is subject to the PRA.

The next issue is whether the Form 1040 U.S. Individual Income Tax Return complies with the PRA. The Commissioner has not denied that the OMB number on the 1040 Form, which forms the basis for its interest and penalty calculations claiming Petitioner did not file such form, is the same number appearing for the past 23 years on the 1040 Form.

This issue then is whether the PRA allows the approval of a Form for 23 years utilizing the same approval number. The tenth Circuit also took this issue on in *Collins v. Collins*, 920 F.2d 619 (10th Cir. 1990) wherein it stated that:

“Assuming arguendo, that the Paperwork Reduction Act mandates that all federal forms contain expiration dates, this requirement plainly would be satisfied by the dates provided on the 1040 forms at issue.”

“On the other hand, the IRS 1040 forms at issue in the present case were explicitly designated as either “1982,” “1983,” or “1984” tax returns with their effective dates of coverage clearly denoted.”

This means that the “expiration date” for the OMB control number appearing on a 1040 Form is the year of the form on the cover page. Since the OMB control number on the 1040 U.S. Individual Income Tax Return in 1984 was 1545-0074 and that the same number appears on the forms at issue in the Commissioner’s Notice of Deficiency, and that since Commissioner admits Petitioner has filed a Form 1040 with the OMB number 1545-0074, this Court should find that as a matter of law the 1040 Form for 1995-2001 do not contain a valid OMB number and as such Petitioner owes no interest or penalty pursuant to either section 6651 and 6654 of the IRS.

To be certain, *Collins* Court stated:

“The Paperwork Reduction Act, 44 U.S.C § 3501-20, requires that federal agencies submit all ‘information collection requests’ to the Director of the Office of Management and Budget (OMB) for review, 44 U.S.C. § 3507. ‘Typical information collection requests include tax forms, medicare forms, financial loan applications, job applications, questionnaires, compliance reports and tax or business records.’ *Dole v. Steelworkers*, 494 U.S. 26, 33 (1990) 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990). Once the OMB director approves the information collection requests, he must assign it a control number. 44 U.S.C. § 3504. An agency shall not conduct or sponsor the collection of information unless the information collection request has been submitted to and approved by the Director, 44 U.S.C. § 3506(a), and shall not engage in a collection of information without obtaining from the Director a control number to be displayed upon the information collection request, 44 U.S.C. § 3507(f).

Moreover,

no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter.

[31] 44 U.S.C. § 3512. See, e.g., *United States v. Smith*, 866 F.2d 1092, 1098-99 (9th Cir. 1989) (prosecution for failure to file a Plan of Operations with the Forest Service barred under § 3512 of the Act because the filing requirement was imposed pursuant to an information collection request which lacked an OMB control number.)

In *Dole*, the Supreme Court stated that:

“The Act prohibits any federal agency from adopting regulations which impose paperwork requirements on the public unless the information is not available to the agency from another source within the Federal Government, and the agency must formulate a plan for tabulating the information in a useful manner.”

at 32-33

Dole further explained that:

“After an agency has satisfied itself that an instrument for collecting information - termed an ‘information collection request’ - is needed, the agency must submit the request to OMB for approval. See 44 U.S.C. § 3507(a)(2) (1982 ed., Supp. V). If OMB disapproves the request, the agency may not collect the information. See 44 U.S.C. § 3507(a).

at 33

Also:

“The Act applies to ‘information collection requests’ by a federal agency which are defined as

‘a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, collection of information requirement, or other similar method calling for the collection of information.’ 44 U.S.C. § 3502(11) (1982 ed., Supp. V).

‘Collection of information,’ in turn is defined as

‘the obtaining or soliciting of facts or opinions by an agency through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods calling for either -‘

Dole at 34

The Supreme Court went on to say that “[W]hile the grammar of this text can be faulted, **its meaning is clear: the public is protected under the Paperwork Reduction Act from paperwork regulations not issued in compliance with the Act**, only when those regulations dictate that a person maintain information for an agency or provide information to an agency.

Dole, 494 U.S. at 40 (1990)

The Commissioner argues that since they are “investigating” on “mere suspicion that the tax law is being violated” that “the Paperwork Reduction Act is not applicable to information collection requests issued during an investigation of an individual to determine his or her tax liability.” Quoting *Lonsdale v. U.S.* 919 F.2d 1440 (10th Cir. 1990).

The problem with the Commissioner’s argument is that they fail to identify what “tax law” is being violated. Petitioner requested the Commissioner admit that the “Notice of Deficiency was issued based upon the Commissioner’s interpretation and application of section 6012.” (Request #9) The Commissioner argues that section 6020(b)(1) directs “if any person fails to make a return required under any internal revenue law or related regulations, at the time prescribed for filing, or makes, willfully or otherwise, a false or fraudulent return, Secretary is required to make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.” *Respondent’s Admissions* @ “-2-”

Respondent has not alleged Petitioner filed a “false or fraudulent” return. Respondent alleges Petitioner did not file a return he was required to file. The only other issue under section 6020(b)(1) is if the Secretary can establish that Petitioner “fails to make a return required under the Internal Revenue Law or related regulations....” *Respondent’s Admissions* @ “-2-”

Respondent stated this at the same time Respondent denied that section 6012 was the “law” to which the Secretary relied upon to issue the purported Notice of Deficiency. *Id.*

Respondent has not identified any section to which Petitioner failed to comply with. Respondent has not identified any provision supporting its issuance of the Notice of Deficiency. Respondent has not identified any specific form of return Petitioner willfully failed to file.

And then there is the “exemption amount” that triggers section 6012 as Respondent then admits. The Commissioner admits that the “exemption amount” that triggers section 6012 is not an amount that Congress wrote in the law. Not one specific provision. Section 6012 says that this amount is found and given the same meaning as section 151(d). Section 151(d) does not provide any specific amount for the years in question.

With no specific amount in the law triggering the requirement under section 6012 and without Respondent identifying any other specific provision Petitioner failed to comply with, Respondent’s Notice of Deficiency must be dismissed and an order in favor of Petitioner should be granted.

The Commissioner argues that “I.R.C. § 3518(c)(1)(B)(ii) provides...”

Petitioner cannot find such a provision in the I.R.C. (Assuming I.R.C. means Internal Revenue Code.)

CONCLUSION

Respondent has not identified any provision of the Internal Revenue Laws to which triggered the Secretary’s 6020 investigation, and since Respondent cannot establish that the Form 1040 with OMB #1545-0074 is valid since this number expired years earlier when it appeared for the first time on a Form 1040, and that since there is no “exemption amount” that triggers any requirements under section 6012, this Court should enter an Order as a matter of law that Respondent’s Notice of Deficiency should be dismissed as to the interest and penalty under sections 6651 and 6654 as well as the “increase in tax” as it is not authorized according to laws of the United States.