



United States Tax Court

Washington, DC 20217

Gregory J. Podlucky & Karla S.)	
Podlucky,)	
)	
Petitioners)	
)	Docket No. 453-17.
v.)	
)	
Commissioner of Internal Revenue,)	
)	
Respondent)	
)	

ORDER

In 2009 Gregory Podlucky (petitioner) was indicted in the U.S. District Court for the Western District of Pennsylvania for (among other things) attempting to evade or defeat tax for 2003-2006, in violation of I.R.C. § 7201. Petitioner pleaded guilty to this charge for 2005. He was sentenced to a lengthy term of imprisonment.

After he was remanded to custody, the Internal Revenue Service (IRS or respondent) completed a civil examination of his 2003-2006 tax years. In 2016 it issued him and his wife a notice of deficiency determining deficiencies totaling \$4,781,702, plus civil fraud penalties (against him only) totaling \$3,586,277. Respondent has moved for partial summary judgment, contending that petitioner is collaterally estopped from denying that he fraudulently underpaid his tax for 2005. We will grant the motion.

Background

The following facts are drawn from the pleadings, a stipulation of facts, respondent’s motion papers, and the attached declarations and exhibits. See Tax Court Rule 121(b). These facts are stated solely for the purpose of ruling on respondent’s motion, not as findings of fact in this case. See Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff’d, 17 F.3d 965 (7th Cir. 1994). Petitioner was incarcerated in New Jersey when the petition was filed, and his wife resided in California.

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Petitioner was the chief executive officer and majority shareholder of LeNature's, Inc. (LNI). In 1998 he implemented a scheme to inflate LNI's gross receipts and profits. He gave an employee fake "order forms with what he wanted [LNI's] sales to be," and he instructed the employee "to create fake invoices to support the fictitious sales number[s]." He "fabricated checks from [LNI's] customers," "create[d] fictitious * * * bank statements," and generated artificial "reports and financial statements." Petitioner submitted these bogus documents to banks, auditors, and potential investors.

In September 2009 petitioner was indicted for mail fraud, conspiracy to commit money laundering, and attempting to evade or defeat tax in violation of I.R.C. § 7201. The indictment charged that petitioner "did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for the calendar year 2005 by preparing * * * a false and fraudulent joint U.S. Individual Income Tax Return." The Government alleged that petitioner fabricated LNI's financial statements to induce lenders and investors to advance funds to the business. Petitioner during 2005 allegedly diverted more than \$7 million of his ill-gotten gains to buy jewelry, model trains, and a mansion house.

In June 2011 petitioner pleaded guilty to tax evasion for 2005. During his plea hearing the District Court asked: "Mr. Podlucky, did you * * * during the calendar year 2005 willfully attempt to evade and defeat a large part of the income tax due and owing by you and your spouse * * * ?" Petitioner answered "Yes, Your Honor. * * * I did it all in my sole capacity." When asked if he "still wish[ed] to plead guilty," petitioner responded "Yes, Your Honor."

In October 2011 the District Court entered judgment pursuant to petitioner's guilty plea. He appealed that judgment to the U.S. Court of Appeals for the Third Circuit, which dismissed his appeal. See United States v. Podlucky, Nos. 11-4087, 11-4088, 11-4089 (3d Cir. June 13, 2012).

After petitioner was remanded to custody, the IRS examined his 2003-2006 tax years and issued to him and his wife the notice of deficiency referenced above. They timely petitioned this Court in January 2017. The case was continued several times due to petitioner's incarceration.

On July 2, 2021, respondent filed a motion for partial summary judgment. Relying on petitioner's conviction of criminal tax evasion, respondent contends that collateral estoppel prevents him from denying that he fraudulently underpaid

his tax for 2005. We ordered petitioner to respond to the motion by August 6, 2021. He did not file a response by that date or subsequently.

Discussion

A. Summary Judgment Standard

The purpose of summary judgment is to expedite litigation and avoid costly, unnecessary, and time-consuming trials. See FPL Grp., Inc. & Subs. v. Commissioner, 116 T.C. 73, 74 (2001). We may grant partial summary judgment regarding an issue as to which there is no genuine dispute of material fact and a decision may be rendered as a matter of law. Tax Court Rule 121(b); Sundstrand Corp., 98 T.C. at 520. In deciding whether to grant partial summary judgment, we construe factual materials and inferences drawn from them in the light most favorable to the nonmoving party. Sundstrand Corp., 98 T.C. at 520.

Because petitioner did not respond to the motion for partial summary judgment, we could rule against him for that reason alone. See Tax Court Rule 121(d). We will nevertheless consider the motion on its merits. We find that there are no disputes of material fact that prevent the collateral estoppel issue from being summarily adjudicated.

B. Analysis

“If any part of any underpayment of tax required to be shown on a return is due to fraud,” I.R.C. § 6663(a) imposes a penalty of 75% of the portion of the underpayment attributable to fraud. To prove fraud the IRS must establish two elements: (1) that there was an underpayment of tax and (2) that at least some portion of the underpayment was due to fraud. Hebrank v. Commissioner, 81 T.C. 640, 642 (1983). If the IRS proves that some portion of an underpayment for a particular year was attributable to fraud, then “the entire underpayment shall be treated as attributable to fraud” unless the taxpayer shows, by a preponderance of the evidence, that the balance was not so attributable. I.R.C. § 6663(b).

Respondent argues that petitioner’s conviction under I.R.C. § 7201 collaterally estops him from denying that his failure to report income for 2005 resulted in an underpayment of tax and that at least part of the underpayment was due to fraud within the meaning of I.R.C. § 6663. That is so, respondent contends, because “the elements of criminal tax evasion and civil tax fraud are identical.” We agree.

“Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.” Montana v. United States, 440 U.S. 147, 153 (1979). “Because the elements of criminal tax evasion and civil tax fraud are identical,” Uscinski v. Commissioner, T.C. Memo. 2006-200, 92 T.C.M. (CCH) 285, 287, “[a] taxpayer is collaterally estopped from denying civil tax fraud * * * when convicted for criminal tax evasion,” DiLeo v. Commissioner, 96 T.C. 858, 885 (1991).

Petitioner pleaded guilty to “willfully attempt[ing] to evade and defeat a large part of the income tax due” for 2005. He was accordingly convicted of criminal tax evasion under I.R.C. § 7201 for 2005, and that judgment has become final. He is thus estopped from denying that he underpaid his tax for 2005 and that this underpayment was attributable to fraud. See ibid.; see also Anderson v. Commissioner, 698 F.3d 160, 164-165 (3d Cir. 2012), aff’g T.C. Memo. 2009-44; United States v. Schiff, 240 F. App’x 738 (9th Cir. 2006).

Respondent acknowledges that petitioner’s guilty plea did not specify the amount of the underpayment. Petitioner is therefore not precluded from contesting the precise amount of the underpayment for 2005. But he cannot dispute that he fraudulently underpaid some amount for that year. See Wapnick v. Commissioner, T.C. Memo. 1997-133. Accordingly, it is

ORDERED that respondent’s Motion for Partial Summary Judgment, filed July 2, 2021, is granted in that petitioner is precluded from denying that he fraudulently underpaid his tax for the 2005 tax year.

(Signed) Albert G. Lauber
Judge