



United States Tax Court
Washington, DC 20217

Jason Wakefield & Chere Wakefield,)	
)	
Petitioners)	
)	
v.)	Docket No. 12186-20SL.
)	
Commissioner of Internal Revenue,)	
)	
Respondent)	
)	
)	

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to the parties a copy of the pages of the transcript of the trial in this case before Chief Special Trial Judge Lewis R. Carluzzo at Los Angeles, California, containing his oral findings of fact and opinion rendered on September 17, 2021, during the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered for respondent.

(Signed) Lewis R. Carluzzo
Chief Special Trial Judge

Served 10/26/21

1 Bench Opinion by Judge Lewis R. Carluzzo

2 September 17, 2021

3 Jason Wakefield & Chere Wakefield v. Commissioner

4 Docket No. 12186-20SL

5 THE COURT: The Court has decided to render oral
6 findings of fact and opinion in this case, and the
7 following represents the Court's oral findings of fact and
8 opinion (bench opinion). Section references contained in
9 this bench opinion are to the Internal Revenue Code of
10 1986, as amended, in effect for the relevant period. Rule
11 references are to the Tax Court Rules of Practice and
12 Procedure.

13 This section 6330(d) proceeding is subject to
14 the Small Tax Case provisions of section 7463 and Rules
15 170 through 174. This bench opinion is made pursuant to
16 the authority granted by section 7459(b) and Rule 152.
17 Except as provided in Rule 152(c), this bench opinion
18 shall not be cited as authority, and pursuant to section
19 7463(b) the decision entered in this case shall not be
20 treated as precedent for any other case.

21 Jason Wakefield appeared on his own behalf.
22 Chere Wakefield signed the stipulation of facts, but she
23 did not appear and was not otherwise represented at trial.
24 Sarah C. Nadel appeared on behalf of respondent.

25 In a Notice of Determination Concerning



1 Collection Action(s) Under Section 6320 and/or 6330, dated
2 September 10, 2020 (notice), respondent determined that a
3 Notice of Federal Tax Lien is an appropriate collection
4 action with respect to petitioners' unpaid 2016 Federal
5 income tax liability (underlying liability). Petitioners
6 do not challenge the collection action proposed by
7 respondent. Instead, they challenge the amount of the
8 underlying liability, but only as it relates to various
9 additions to tax.

10 The issue for decision is whether petitioners
11 had reasonable cause for (1) their failure to file a
12 timely Federal income tax return, (2) their failure timely
13 to pay the tax shown on that tax return, and (3) the
14 underpayment of estimated tax.

15 Some of the facts have been stipulated and are
16 so found. At the time the petition was filed, petitioners
17 resided in California. References to petitioner are to
18 Jason Wakefield.

19 Petitioners, once married to each other, were in
20 the process of getting a divorce during the relevant time
21 period. They entered into an agreement incident to the
22 divorce that provided that petitioner make a lump-sum
23 payment to his former spouse, however, the record is
24 unclear as to when the agreement was finalized and when,
25 if ever, the payment was made.



1 At all times relevant, petitioner owned and
2 operated a sole proprietorship. Petitioner had no
3 employees; he performed all of the electrical work himself
4 and also tended to the financial aspects of the business,
5 such as paying for supplies, billing, and collecting from
6 customers, etc. Apparently, petitioner's business
7 experienced a significant increase in revenues in 2015 and
8 2016. Around the same time, he was diagnosed with a
9 serious medical condition.

10 Petitioner's medical condition required
11 occasional trips to the emergency room during the relevant
12 time period, which sometimes required an overnight stay.
13 His medical condition also adversely affected his
14 professional responsibilities by limiting his ability to
15 perform certain services, including working in an attic or
16 in a crawl space. Nevertheless, his medical condition did
17 not totally prevent petitioner from conducting his
18 business operations.

19 For many years, including 2016, petitioners
20 hired a certified public accountant (C.P.A.) to assist
21 them in the preparation of their returns. During their
22 marriage petitioner was responsible for collecting and
23 providing financial information and documentation to the
24 C.P.A.

25 Petitioners requested and were granted an



1 extension of time to file their 2016 Federal income tax
2 return until October 15, 2017. Petitioners did not file
3 their 2016 return until May 4, 2018. Their 2016 return
4 showed a balance due, which petitioners did not pay when
5 they filed the return. In due course, respondent assessed
6 the tax shown on the return, an addition to tax for
7 failure to timely file, an addition to tax for failure to
8 pay timely, and an addition to tax for failure to pay
9 estimated tax.

10 I. Jurisdiction and Standard of Review

11 Section 6320(a)(1) establishes the requirement
12 that the Commissioner notify in writing the taxpayer
13 described in section 6321 of the filing of a notice of
14 Federal tax lien under section 6323. This notice required
15 by section 6320 must be sent not more than five business
16 days after the notice of Federal tax lien is filed and
17 must inform the taxpayer of the opportunity for
18 administrative review of the matter in the form of an
19 administrative hearing before the Appeals Office. Sec.
20 6320(a)(2)(C), (3).

21 If an administrative hearing is requested,
22 section 6320(b) and (c) grants the taxpayer the right to a
23 fair hearing before an impartial Appeals officer,
24 generally to be conducted in accordance with the
25 procedures described in section 6330(c), (d), and (e). At

1 the administrative hearing the Appeals officer conducting
2 the hearing must verify that the requirements of any
3 applicable law or administrative procedure have been met.
4 Sec. 6330(c)(1); see sec. 6320(c). The taxpayer may raise
5 at the hearing "any relevant issue relating to the unpaid
6 tax", including appropriate spousal defenses, challenges
7 to the appropriateness of the collection action, and
8 offers of collection alternatives. See sec.
9 6330(c)(2)(A); see sec. 6320(c). Within 30 days after the
10 Appeals Office issues a notice of determination, the
11 taxpayer may appeal the determination to the Court. See
12 sec. 6330(d)(1); see sec. 6320(c).

13 If the underlying tax liability is properly in
14 dispute the Court reviews the issue de novo. Goza v.
15 Commissioner, 114 T.C. 176, 181-182 (2000). The Court
16 reviews all other determinations for abuse of discretion.
17 Id. at 182.

18 II. Petitioners' 2016 Tax Liability

19 In addition to assessing petitioners' self-
20 reported income tax for 2016 as shown on their untimely
21 return, respondent assessed the additions to tax for
22 failure to timely file, failure to timely pay, and for the
23 underpayment of estimated tax.

24 The term "underlying tax liability" as used in
25 section 6330(c)(2)(B) includes tax, additions to tax, and



1 interest. See Katz v. Commissioner, 115 T.C. 329, 339
2 (2000). Petitioners are entitled to challenge the amount
3 of the underlying liability in this proceeding because
4 they did not receive a notice of deficiency with respect
5 to that liability, they have not otherwise had a prior
6 opportunity to challenge that liability, and they properly
7 raised the challenge to the underlying liability during
8 the administrative hearing.. Sec. 6330(c)(2)(B); see
9 Giamelli v. Commissioner, 129 T.C. 107, 115 (2007);
10 Montgomery v. Commissioner, 122 T.C. 1, 8-10 (2004); sec.
11 301.6320-1(f)(2), Q & A-F3, Proced. & Admin. Regs.

12 According to petitioners, they should not be
13 liable for the various additions to tax because their
14 failure to do what they should have done was due to
15 reasonable cause and not willful neglect. As noted, we
16 review, de novo, their challenge. See sec. 6330(c)(2)(B);
17 Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v.
18 Commissioner, 114 T.C. at 182; sec. 301.6320-1(e)(3), Q &
19 A-E2, Proced. & Admin. Regs. Respondent bears the burden
20 of production with respect to the additions to tax here in
21 dispute, see sec. 7491(c), and petitioners do not suggest
22 that respondent has failed to satisfy that burden.

23 III. Additions to Tax Under Section 6651(a)(1) and (2) and
24 Section 6654

25 Section 6651(a)(1) provides for an addition to

1 tax in the event a taxpayer fails to file a timely return
2 (determined with regard to any extension of time for
3 filing), unless it is shown that such failure is due to
4 reasonable cause and not due to willful neglect. The
5 amount of the addition is equal to 5% of the amount
6 required to be shown as tax on the delinquent return for
7 each month or fraction thereof during which the return
8 remains delinquent, up to a maximum addition of 25% for
9 returns more than four months delinquent. Id.

10 Section 6651(a)(2) provides for an addition to
11 tax for failure to timely pay the amount shown as tax on
12 any return specified in section 6651(a)(1) unless the
13 taxpayer establishes that the failure was due to
14 reasonable cause and not willful neglect. The addition is
15 calculated as 0.5% of the amount shown as tax on the
16 return but not paid, with an additional 0.5% for each
17 month or fraction thereof during which the failure to pay
18 continues, up to a maximum of 25%. Id. The amount of the
19 addition to tax under section 6651(a)(2) reduces the
20 addition to tax under section 6651(a)(1) for any month for
21 which both additions to tax apply. See sec. 6651(c)(1).

22 Section 6654(a) and (b) provides for an addition
23 to tax in the event of an underpayment of a required
24 installment of individual estimated tax. Each required
25 installment of estimated tax is equal to 25% of the

1 "required annual payment", which, in turn, is equal to the
2 lesser of (1) "90 percent of the tax shown on the return
3 for the taxable year (or, if no return is filed, 90
4 percent of the tax for such year)", or (2) if the
5 individual filed a return for the immediately preceding
6 year, 100% of the tax shown on that return. Sec.
7 6654(d) (1) (A) and (B).

8 According to respondent, petitioner is liable
9 for the above-referenced additions to tax as now applied
10 to the Federal income tax liability shown on petitioners'
11 untimely 2016 Federal income tax return. It is undisputed
12 that petitioners failed to (1) timely file their 2016
13 return, (2) pay the tax reported on that return, or (3)
14 pay any estimated tax for the year in issue.

15 As noted, according to petitioners, they should
16 not be held liable for any of the additions to tax because
17 the failures that gave rise to each of those additions
18 were due to reasonable cause and not willful neglect.
19 Respondent's burden does not require him to refute
20 petitioners' claim in this regard. See Higbee v.
21 Commissioner, 116 T.C. 438, 446-447 (2001).

22 A. Section 6651(a) (1) Reasonable Cause

23 According to petitioners, petitioner's medical
24 condition and the stress of their divorce caused the
25 failures that gave rise to the additions to tax here in

1 dispute. They point out that petitioner was responsible
2 for the financial aspects of their marriage, including
3 collecting and providing financial information and
4 documentation to the C.P.A. to assist in the preparation
5 of their returns, and that for 2016 he was unable to
6 perform this responsibility as a result of the
7 aforementioned difficulties.

8 We are sympathetic to petitioner's medical
9 condition and the hardship due to his divorce during the
10 relevant time. Serious illness of the taxpayer or a
11 member of the taxpayer's family can constitute reasonable
12 cause for failure to file a timely return but only if the
13 illness caused total or near total incapacity to act.
14 See, e.g., Tabbi v. Commissioner, T.C. Memo. 1995-463;
15 Harris v. Commissioner, T.C. Memo. 1969-49. On the other
16 hand, if a taxpayer does not timely file but is able to
17 continue to conduct his or her business affairs despite
18 the illness or incapacity, the Court has rejected the
19 taxpayer's reasonable cause position. See, e.g., Ruggeri
20 v. Commissioner, T.C. Memo. 2008-300, slip op. at 7-8 (and
21 cases cited there at).

22 Again, we are sympathetic to petitioner's
23 difficulties, but we are not persuaded that the challenges
24 he faced satisfy the reasonable cause requirement of
25 section 6651(a)(1). Despite those challenges, petitioner

1 was able to engage in his business during the relevant
2 period, even if only on a limited basis, and although
3 hospitalized from time to time, it was never for an
4 extended period. Consequently, petitioners are liable for
5 the addition to tax imposed by section 6651(a) (1).

6 B. Section 6651(a) (2) Reasonable Cause

7 The section 6651(a) (2) addition to tax for
8 failure to pay is applicable unless the taxpayer shows
9 that he exercised ordinary business care and prudence in
10 providing for the payment of the liability and was
11 nevertheless either unable to pay the tax or would suffer
12 an undue hardship. Sec. 301.6651-1(c) (1), *Proced. &*
13 *Admin. Regs.*

14 Petitioner's testimony seems to suggest that he
15 did not pay his tax when due as a result of the financial
16 hardship related to his divorce, specifically, his
17 obligation to make a lump-sum payment to his former
18 spouse. However, the record is unclear with respect to
19 the circumstances surrounding the payment or at least the
20 timing of the payment, and petitioner did not argue any
21 set of facts or circumstances that would lead the Court to
22 find that he was unable to pay the tax or would have
23 suffered undue hardship if he had paid the tax in full on
24 its actual due date. Moreover, adverse economic
25 conditions do not necessarily constitute reasonable cause.

1 As the Court have recognized, almost every nonwillful
2 failure to pay taxes is the result of financial
3 difficulties.

4 See Estate of Hartsell v. Commissioner, T.C.
5 Memo. 2004-211. Furthermore, we have already found that
6 petitioner's difficulties related to his medical condition
7 and the stress from his divorce do not provide reasonable
8 cause for petitioners' failure to file, and we maintain
9 that position with respect to their obligation to pay the
10 tax when due. See Taylor v. Commissioner, T.C. Memo.
11 2009-27. Accordingly, respondent's imposition of the
12 addition to tax under section 6651(a)(2) is sustained.

13 C. Section 6654 Reasonable Cause

14 Except in very limited circumstances not
15 applicable in this case, see sec. 6654(e)(3)(B), section
16 6654 provides no exception for reasonable cause, Mendes v.
17 Commissioner, 121 T.C. 308, 323 (2003). Instead, the
18 section 6654 addition to tax is mandatory unless the
19 taxpayer establishes that one of the exceptions in section
20 6654(e) applies. Recklitis v. Commissioner, 91 T.C. 874,
21 913 (1988).

22 There are two mechanical exceptions to the
23 applicability of the section 6654 addition to tax. First,
24 the addition is not applicable if the tax shown on the
25 individual's return for the year in question (or, if no



1 return is filed, the individual's tax for that year),
2 reduced for these purposes by any allowable credit for
3 wage withholding, is less than \$1,000. Sec. 6654(e)(1).
4 Second, the addition is not applicable if the individual's
5 tax for the preceding taxable year was zero. Sec.
6 6654(e)(2). Petitioners do not claim, much less establish
7 that either of these exceptions apply. Accordingly, we
8 find that petitioners are liable for the addition to tax
9 under section 6654.

10 Otherwise, and in all other respects, respondent
11 has shown that he has satisfied the procedural
12 requirements imposed upon him by section 6330, and
13 petitioners do not suggest otherwise. It follows that
14 respondent's determination to proceed with collection of
15 petitioners' 2016 tax liability in accordance with the
16 notice is sustained.

17 In closing we think it appropriate to mention an
18 observation made by the U.S. Supreme Court, "[b]ad things
19 happen if you fail to pay federal income taxes when due."
20 Hinck v. United States, 550 U.S. 501, 502 (2007). From
21 petitioner's presentation at trial, we are certain that he
22 shares that sentiment, especially when he learns of this
23 bench opinion. Nevertheless, petitioners should keep in
24 mind that the focus of this case is narrow; we address and
25 resolve only the issue before us. The resolution of this



1 case says nothing about petitioners' entitlement to pursue
2 any collection alternatives that might otherwise be
3 available to them.

4 To reflect the foregoing,

5 Decision will be entered for respondent.

6 This concludes the Court's oral findings of fact
7 and opinion in this case.

8 (Whereupon, at 9:30 a.m., the above-entitled
9 matter was concluded.)

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