

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SAMMIE CROSBY : CIVIL ACTION
 :
 v. :
 :
 UNITED STATES OF AMERICA : NO. 99-3634

MEMORANDUM and ORDER

Norma L. Shapiro, S.J.

May 31, 2000

Plaintiff Sammie Crosby ("Crosby") filed this action, along with a motion for injunctive relief, under 26 U.S.C. § 7429(b)(2)(A) to challenge the reasonableness of an Internal Revenue Service ("IRS") jeopardy levy. Defendant, the United States of America ("government"), filed a motion for summary judgment. On February 25, 2000, the court held an evidentiary hearing on the reasonableness of the levy. For the reasons set forth below, the plaintiff's motion for injunctive relief will be denied and judgment will be entered for the government.

BACKGROUND

On April 6, 1992, the IRS imposed a trust-fund recovery penalty of \$60,834.05 against Crosby as the responsible officer of Crosby's Auto Body Shop. No payments were made on this liability during the time period relevant to this action. An April 1, 1999 letter from attorney Charles W. Sweeney informed the IRS that Sweeney's client, the Hartford Insurance Company ("Hartford"), was issuing a \$90,000 check to Crosby in accordance with an arbitration award against Hartford on a personal injury

claim. Sweeney gave the IRS a deadline of April 9, 1999 for making a claim on the \$90,000.

According to affidavits and testimony of Izeliours Reid ("Reid"), an IRS Revenue Officer in the Collection Division, Crosby owed the IRS \$107,102.76, including interest, as of April 9, 1999. After learning about the money due Crosby from Hartford, Reid conducted a LEXIS computer search to determine whether Crosby owned any other assets available to satisfy his unpaid tax liability. Reid determined that Crosby's only assets were a home owned jointly with his wife, worth approximately \$35,000, and an Individual Retirement Account ("IRA"), worth approximately \$1,250. Reid also learned that all income reported on the joint income tax returns filed by Crosby and his wife in 1995, 1996, and 1997 was earned by Crosby's wife.

Based on that information, Reid concluded that Crosby was financially insolvent and requested that the IRS issue a jeopardy levy on Hartford for the funds it owed Crosby. A jeopardy levy allows the IRS to expedite its collection of funds when it determines the collection might be jeopardized by delay. See 26 U.S.C.A. § 6331(d)(3) (West Supp. 1999). A formal request for jeopardy levy authorization was submitted to the IRS Office of District Counsel; it approved the jeopardy levy on April 9, 1999. The IRS served a Notice of Levy on Sweeney, Hartford's attorney, and Crosby. Crosby requested an administrative review of the

jeopardy levy, a Collection Information Hearing, and a Collection Due Process Hearing. Crosby filed the instant action on July 19, 1999.

At an evidentiary hearing, Crosby claimed that Reid had not obtained a full picture of his financial situation. Crosby testified that in addition to the home and IRA, he owned two other substantial assets. The first was property at 3054-58 North Franklin Street, Philadelphia, the former location of Crosby's Auto Body Shop. Crosby placed the value of this property, unencumbered by any mortgages, at between \$60,000 and \$70,000 based on offers he had received from potential buyers within the past year. The second was a Mercedes-Benz automobile worth approximately \$17,000.

Following the evidentiary hearing, the government submitted the affidavit of Philip Marcella ("Marcella"), a Revenue Officer for the IRS' Collection Field Branch 3, Research and Resolution Group. The affidavit states that REALIST, a computerized real estate information service, stated the assessed market value of the 3054-58 North Franklin Street property is \$3,520, based on a fair market value of approximately \$12,000 based on the current 3.33 "common level ratio."¹ The affidavit also states that

¹ The "common level ratio" is established by the Pennsylvania Department of Revenue for Philadelphia County based on sales data compiled by the State Tax Equalization Board; it represents the ratio of assessed market value to fair market

(continued...)

Crosby owes \$2,591.86 in unpaid real estate taxes on that property; a copy of the March 3, 2000 tax bill was attached.

DISCUSSION

Plaintiff argues the jeopardy levy should be set aside because the government did not provide sufficient proof of Crosby's alleged insolvency.² 26 U.S.C. § 7429 grants district courts the power to declare levies unreasonable and release them; it does not permit the court to determine the accuracy of the underlying tax assessment. See Tinari v. United States, No. Civ. A. 93-3555, 1996 WL 472416, *3 (E.D. Pa. Aug. 20, 1996). This

¹(...continued)
value. (United States' Supp. Submission Ex. 2.)

²In his original motion for injunctive relief, plaintiff argued (in a somewhat unclear fashion) that he was denied his right to administrative review. Plaintiff also suggested that the levy was inappropriate due to his discharge in bankruptcy. Plaintiff was represented by new counsel at the evidentiary hearing; the court asked new counsel whether plaintiff intended to pursue either of those original arguments and, if so, to explain them. Counsel responded that he had not had time to research those issues; the court permitted plaintiff to file a supplemental brief following the hearing. Plaintiff filed a supplemental brief but did not address either point. The court presumes these arguments have been abandoned but will review them briefly.

The record does not show any denial of plaintiff's administrative review rights. Plaintiff chose to pursue his right to administrative review and request judicial review in this court concerning the reasonableness of the jeopardy levy, as the statute permits. See 26 U.S.C.A. § 7429(b)(1)(A) (West Supp. 1999). The statute does not entitle plaintiff to an administrative determination prior to the assessment of the jeopardy levy; such an interpretation would defeat the purpose of the jeopardy levy provision. With respect to plaintiff's discharge in bankruptcy, counsel for the government stated at the evidentiary hearing that the taxes owed by plaintiff resulting in the jeopardy levy were never at issue in the bankruptcy proceeding. Plaintiff's counsel did not dispute this assertion.

court has the limited role of determining whether the jeopardy assessment and levy were reasonable.

The government has the burden of proving the reasonableness of a jeopardy levy. See 26 U.S.C.A. § 7429(g)(1) (West Supp. 1999). The proceeding is a summary one, and the court need not determine whether information obtained by the IRS, and relied on in executing the levy, would be admissible in evidence at a trial. See, e.g., Lindsey v. United States, 1992 WL 179067, No. 91-CV-459-MHS, *4 (N.D. Ga. May 26, 1992). "The district court may consider information available to the IRS at the time of the execution of the levy as well as information obtained by the IRS subsequent to the execution of the levy." Id.

A jeopardy levy is reasonable if the IRS determines:

(1) a taxpayer is or appears to be designing quickly to depart from the United States; (2) the taxpayer is or appears to be designing quickly to place his, her, or its property beyond the reach of the government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons; or (3) if the taxpayer is in danger of becoming insolvent.

Henderson v. United States, 949 F. Supp. 473, 475 (N.D. Tex. 1996) (holding government's discovery of "large sums of cash which smelled musty" was insufficient to support a jeopardy levy). "[T]he Court should also be mindful of the extraordinary nature of a jeopardy levy, which is designed to be 'used sparingly.'" Id. (citation omitted).

The basis of the government's jeopardy levy is the threat of insolvency. Crosby argues the evidence does not support this determination. Reid did not produce a printout from the LEXIS search revealing Crosby's assets, but his affidavits and testimony were sufficient. The government's affidavit testimony describing its method of valuing the 3054-58 North Franklin Street property by a REALIST search was more convincing than Crosby's testimony about past offers he had received for the property.

Using the most persuasive asset and liability valuations submitted to the court, we agree with the government's determination that Crosby's liabilities exceeded his assets by at least \$40,000. His liabilities included the \$107,102.76 owed to the IRS, \$2,591.86 in real estate taxes, and \$40,000 in attorney fees from his personal injury action, totaling \$149,694.62. His assets included the personal injury settlement of \$90,000, the \$1,250 IRA, and the \$17,000 automobile,³ totaling \$108,250. Crosby's house is not included among his assets because it is owned jointly with his wife; Pennsylvania property jointly held by spouses is not available to satisfy the tax liability of one spouse. See Tinari, 1996 WL 472416 at *1 n.4. While it appears

³We accept Crosby's testimony concerning the value of the automobile. Although the government included a footnote in its brief stating that a Kelly's Blue Book search stated the value of such an automobile, assuming 10,000 miles/year, was approximately \$10,000, the government included no affidavit or other evidence.

Reid missed some of Crosby's assets in his original LEXIS search, the total evidentiary picture following the hearing and all subsequent submissions still reflected a danger of insolvency.

CONCLUSION

The government has proven the jeopardy levy was reasonable by offering evidence that Crosby's liabilities exceeded his assets; he was insolvent or at least in danger of becoming insolvent. Plaintiff's argument emphasizes the fact that the government produced mostly affidavits and testimony, rather than documentation, to support the jeopardy levy. But the summary nature of this proceeding allows for such evidence. Plaintiff's motion for injunctive relief will be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 31st day of May, 2000, upon consideration of plaintiff's motion for injunctive relief, defendant's motion for summary judgment, plaintiff's reply thereto, and following a February 25, 2000 evidentiary hearing, it is **ORDERED** that:

1. Plaintiff's motion for injunctive relief is **DENIED**.
2. Judgment is **ENTERED** in favor of defendant, United States of America, and against plaintiff, Sammie Crosby.
3. Defendant's motion for summary judgment is **DENIED AS MOOT**.

S.J.