

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

UNITED STATES : CIVIL ACTION
 :
 v. :
 :
 CHARLES W. SINGER : No. 00-4840

MEMORANDUM ORDER

This is an action by the United States to reduce to judgment federal tax liabilities, interest and penalties assessed against defendant for the years 1979 through 1989. The court has subject matter jurisdiction pursuant to 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1340, 1345. The government has filed a motion for summary judgment.

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case are "material." Anderson, 477 U.S. at 248. All reasonable inferences from the record must be drawn in favor of the non-movant. Id. at 256.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)), cert. denied, 499 U.S. 921 (1991). The non-moving part may not rest on his pleadings but must come forward with evidence from which a reasonable jury could return a verdict in his favor. Anderson, 479 U.S. at 248; Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

From the evidence of record, as uncontroverted or otherwise taken in a light most favorable to defendant, the pertinent facts are as follow.

Defendant filed a return on September 23, 1986 for the tax years 1979, 1980 and 1981. The government subsequently made assessments and sent notices of deficiency on September 24, 1990 for these tax years. Defendant made thirty-four payments totaling \$45,459.67 on his 1979 tax year assessment in 1991, 1992, 1998 and 1999. He has made no payments on his 1980 and 1981 tax year assessments.

The government made assessments and sent notices of deficiency to defendant for the 1982, 1983 and 1984 tax years on

July 30, 1992. Defendant has made no payments on these assessments. The government also assessed taxes and sent a notice of deficiency for the 1985 tax year on July 30, 1992. Defendant was credited with \$8,952.00 of withholding for the 1985 tax year. On November 9, 1989, defendant filed a return for the tax years 1982, 1983, 1984 and 1985.

Defendant filed a return for the 1986, 1987, 1988 and 1989 tax years on June 1, 1992. The government subsequently made assessments and sent a notice of deficiency on January 10, 1994 for those tax years. Defendant was credited with \$9,043.00 of withholding for the 1986 tax year, \$5930.00 of withholding for the 1987 tax year and a \$25 payment against the 1989 tax year assessment made in 1992.

As of December 31, 2000, the government claims a total of \$4,063,120.89 owed in federal income taxes, interest, penalties and fraud penalties for the years 1979 through 1989.

In a suit to reduce tax assessments to judgment, the United States establishes a prima facie case against a taxpayer when it shows a timely assessment was made. See Freck v. Internal Revenue Service, 37 F.3d 986, 991-92 n.8 (3d Cir. 1994) (assessments are presumed valid and establish a prima facie case of liability); United States v. Klimek, 952 F. Supp. 1100, 1110 (E.D. Pa. 1997). A Certificate of Assessments and Payments ("Certificate") may be used to prove a timely assessment against

the taxpayer and is entitled to a presumption of correctness. See Freck, 37 F.3d at 991-92; Sullivan v. United States, 618 F.2d 1001, 1008 (3d Cir. 1980); Klimek, 952 F. Supp. 1100, 1110-11 (E.D. Pa. 1997).

The declaration of Carlo Gonnella, Advisor for the Special Procedures Branch of the Collection Division of the Internal Revenue Service in Philadelphia, shows that as of December 31, 2000 defendant owed a total of 4,063,230.89 for 1979 through 1989 for taxes, interest and penalties. Of this, \$600,766 represents fraud penalties. Defendant has not quarreled with plaintiff's arithmetic.

Once the government presents a prima facie case, the taxpayer bears the burden of proving by a preponderance of the evidence that he is not liable for the assessments made against him. See United States v. Vespe, 868 F.2d 1329, 1331 (3d Cir. 1989); United States v. Carson, 741 F. Supp. 92, 94 (E.D. Pa. 1990); United States v. Purcell, 798 F. Supp. 1102, 1110 (E.D. Pa. 1991).

Defendant denies that he received notice and demand for the years in question. While notice and demand of the deficiency is necessary for a valid assessment under 26 U.S.C. § 6203, notice and demand is unnecessary when the Internal Revenue Service files a civil action for reduction of an assessment to judgment. See Purcell v. United States, 1 F.3d 932, 941 (9th

Cir. 1993); United States v. McCallum, 970 F.2d 66, 70 (5th Cir. 1992); United States v. Berman, 825 F.2d 1053, 1060 (6th Cir. 1987); Marvel v. United States, 719 F.2d 1507, 1513-14 (10th Cir. 1983). Thus, even if notice and demand had not been made, this would not be fatal to the government's claim for taxes.

To recover interest and penalties, however, the government must show that notice and demand was made. See Purcell, 1 F.3d at 942; 26 U.S.C. § 6601(e)(2)(A); 26 U.S.C. § 6651. The government submitted a signed Certificate which records the assessment dates and dates of notice. This is presumptive proof that notice and demand was made. See United States v. Chila, 871 F.2d 1015, 1019 (11th Cir. 1989) (Certificate is presumptive proof that notice and demand for payment was sent to taxpayer absent affirmative proof to contrary); United States v. Tempelman, 111 F. Supp.2d 85, 91, 95 (D.N.H. 2000) (same); Pursifull v. United States, 849 F. Supp. 597, 601 (S.D. Oh. 1993) (same); Bassett v. United States, 782 F. Supp. 113, 116 (M.D. Ga. 1992) (same). An unsupported assertion of non-receipt will not overcome the presumption of correctness of the Certificate and that notice and demand was made. See id. (taxpayer does not overcome presumption of correctness when Certificate indicates notice and demand sent and he presents no evidence to support his assertion that he did not receive them). See Klimek, 952 F. Supp. at 1111 (granting summary judgment for government when taxpayer failed to present any evidence against correctness of assessment).

Defendant does not deny that he was provided with a Form 4340. As noted in the court's Order of April 24, 2001, the IRS may produce a Form 4340 instead of the actual assessment certificates. See Geiselman v. U.S., 961 F.2d 1, 6 (1st Cir. 1992); Hughes v. U.S., 953 F.2d 531, 535 (9th Cir. 1992); U.S. v. Walton, 909 F.2d 915, 919 (6th Cir. 1990); U.S. v. Bowers, 920 F.2d 220, 223-24 (4th Cir. 1990); Chila, 871 F.2d at 1018-19.

It thus appears that the government is entitled to the assessed tax deficiencies, interest and non-fraud penalties.

The Certificate shows that the government also levied fraud penalties against defendant for the tax years 1979 through 1988. The government bears the burden to prove fraudulent intent to evade tax by clear and convincing evidence when it seeks to impose civil fraud penalties on a taxpayer. See Grossman v. C.I.R., 182 F.3d 275, 277-78 (4th Cir. 1999); Pittman v. C.I.R., 100 F.3d 1308, 1319 (7th Cir. 1996); Hensen v. C.I.R., 887 F.2d 1520, 1525-26 (11th Cir. 1989); Anastasato v. Commissioner, 794 F.2d 884, 889 (3d Cir. 1986); Zell v. C.I.R., 763 F.2d 1139, 1143 (10th Cir. 1985); Klimek, 952 F. Supp. at 1111. In the context of penalties on assessed taxes, fraud is an intentional or purposeful evasion by the taxpayer of a tax known or believed to be owing. See Raley v. United States, 676 F.2d 980, 983 (3d Cir. 1982).

While defendant does not admit that he intended to evade taxes he knew or believed he owed, his persistent response to the government's attempt to collect taxes provides clear and convincing circumstantial evidence of such intent and purpose.

Defendant maintains that the Internal Revenue Service is not an agency of the federal government, that the United States does not exist, that it is unlawfully using a trade name and that it has no right to impose an income tax. That defendant's actions in resisting payment of taxes may be part of an obstinate denial of the existence of the United States and protest of its laws would not render his continued refusal to make payments any less of an intentional evasion.

ACCORDINGLY, this day of August, 2001, upon consideration of plaintiff's Motion For Summary Judgment (Doc. #4) and defendant's response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and judgment will be entered for plaintiff and against defendant in the amount claimed.

BY THE COURT:

JAY C. WALDMAN, J.