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UNITED STATES TAX COURT

ALPHONSE MOURAD,)
)
 Petitioner,)
)
 v.) Docket No. 18038-05L
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

OPENING BRIEF FOR RESPONDENT

PRELIMINARY STATEMENT

This is an appeal from a Notice of Determination Concerning Collection Action(s) Under Section 6230 and/or 6330 issued following a Collection Due Process [hereinafter "CDP"] Hearing.

The Honorable Joseph H. Gale heard this case on May 22, 2007, in Boston, Massachusetts. The evidence in this case consists of the pleadings; a Stipulation of Facts with Exhibits 1-J through 10-J; Exhibits 11-P through 16-P; and the testimony of Petitioner Alphonse Mourad.

The Court requested the parties file simultaneous briefs on or before August 6, 2007 and reply briefs on or before September 19, 2007.

QUESTIONS PRESENTED

1. Whether the petitioner's underlying tax liability for the tax year 1995 is correct.
2. Whether the petitioner's underlying tax liability for the tax year 1999 is correct.
3. Whether respondent's determination to proceed with the proposed levy action is proper.

RESPONDENT'S REQUEST FOR FINDINGS OF FACT

1. Petitioner resided in Massachusetts at the time the petition in this case was filed. (Stip., ¶ 1)
2. Petitioner filed his income tax return for the tax year 1995 reporting taxable interest in the amount of \$311,476.00, a Schedule E loss in the amount of \$256,136.00, a net operating loss in the amount of \$55,340.00, and a tax liability in the amount of \$5,613.00. (Stip., ¶ 2; Exhibit 1-J)
3. Respondent received petitioner's income tax return for the tax year 1995 on November 15, 1999. (Stip., ¶ 2; Exhibits 1-J and 3-J).
4. Petitioner made no payments with the 1995 income tax return or estimated payments prior to the filing the 1995 income tax return. (Exhibits 1-J and 3-J)
5. Respondent assessed a tax in the amount of \$5,613.00 for the tax year 1995 on March 20, 2000. (Exhibit 3-J)
6. Respondent assessed a late filing penalty, pursuant to I.R.C. § 6651(a)(1), in the amount of \$1,262.92 for the 1995 tax year on March 20, 2000. (Exhibit 3-J)
7. Respondent assessed a failure to pay penalty, pursuant to I.R.C. § 6651(a)(2), in the amount of \$1,234.86 for the tax year 1995 on March 20, 2000. (Exhibit 3-J)

8. Respondent assessed interest in the amount of \$2,607.89 for the tax year 1995 on March 20, 2000. (Exhibit 3-J)

9. Petitioner filed his income tax return for the tax year 1999 reporting income in the amount of \$310,692.00 and a tax liability in the amount of \$536,931.00. (Stip. ¶ 3; Exhibit 2-J)

10. Respondent received petitioner 1999 income tax return on December 14, 2004. (Stip. ¶ 3; Exhibits 2-J and 4-J)

11. Respondent assessed a tax in the amount of \$107,502.02 for the 1999 tax year on February 7, 2005. (Exhibit 4-J)

12. Petitioner made no payments with the 1995 income tax return or estimated payments prior to the filing the 1995 income tax return. (Exhibits 2-J and 4-J)

13. Respondent assessed a late filing penalty, pursuant to I.R.C. § 6651(a)(1), for the 1999 tax year in the amount of \$24,187.95 on February 7, 2005. (Exhibit 4-J)

14. Respondent assessed a failure to pay tax penalty, pursuant to I.R.C. § 6651(a)(2), for the 1999 tax year in the amount of \$26,875.50 on February 7, 2005. (Exhibit 4-J)

15. Respondent assessed interest for the 1999 tax year in the amount of \$45,898.19 on February 7, 2005. (Exhibit 4-J)

16. On April 13, 2005, respondent sent, via certified mail, a Final Notice of Intent to Levy and Notice of Your Right to a