



United States Tax Court

Washington, DC 20217

CHARLTON C. TOOKE, III,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 398-21L.

ORDER

Petitioner, Charlton C. Tooke, III, commenced this case pursuant to sections 6320¹ and 6330, wherein he asks this Court to review a notice of determination issued by the Internal Revenue Service (IRS) Independent Office of Appeals (Appeals) that sustained the filing of a Notice of Federal Tax Lien and a proposed levy action.

On July 1, 2021, Mr. Tooke filed his [Second] Motion for Judgment on the Pleadings (docket entry no. 9).² Therein Mr. Tooke argues that Appeals Officers are Officers of the United States who must be appointed in the manner specified by the Appointments Clause. *See* U.S. Const., art. II, § 2, cl. 2. In that Motion, Mr. Tooke also argues that “as a[] [principal] Officer of the United States, the Chief of Appeals holds office unconstitutionally, in violation of the Appointments Clause.” Mr. Tooke asks this Court to remand his case back to Appeals for a new hearing upon cure of the purported constitutional defect.

On July 14, 2022, respondent filed an Objection to [the Second] Motion for Judgment on the Pleadings (docket entry no. 16). In his objection, respondent states that “[w]hile petitioner is incorrect that the appointment of the Chief of Appeals violates the Appointments Clause, the appropriate remedy would not be to void every AOs actions: the Chief of Appeals did not conduct the petitioner’s CDP hearing, and

¹ Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulatory references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

² On April 29, 2021, Mr. Tooke filed his [First] Motion for Judgment on the Pleadings (docket entry no. 6). Therein he asks this Court to declare Appeals unconstitutional as violating the Separation of Powers and to set aside the actions of Appeals.

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it is well established that the Appeals Officer who conducted the hearing is not an officer.” However, respondent acknowledges that the Chief of Appeals is likely an “inferior officer” because “the position is a continuing one that is established by law that involves the exercise of significant authority.”

On July 25, 2022, Mr. Tooke filed his Reply to Objection to [the Second] Motion for Judgment on the pleadings (docket entry no. 21). Therein Mr. Tooke concludes that “given the direct effects based on the control over Appeals’ nationwide policies and activities exercised by the Chief of Appeals and the insulation from control and accountability provided under the statutory scheme, Petitioner is entitled to a remedy including new, constitutionally compliant CDP proceedings.” It is still, however, unclear how the appointment of the Chief of Appeals has any impact on Mr. Tooke’s case and how the few cases cited therein warrant a remand as an appropriate remedy if there is an Appointments Clause violation.

The Court has concluded that additional briefing would be helpful in resolving this motion. Given the novelty of the issue, the Court welcomes amicus briefs.

Accordingly, it is

ORDERED that, on or before May 15, 2023, the parties shall each file an additional brief addressing whether Mr. Tooke has standing to raise the issue of appointment of the Chief of Appeals, given that Mr. Tooke did not appear before the Chief of Appeals. As part of the parties’ arguments regarding standing, they shall answer the following question: if the Court concludes that there is an Appointments Clause violation regarding the Chief of Appeals, what is the appropriate remedy? It is further

ORDERED that any motion for leave to file an amicus curiae brief in support of either party must be filed on or before May 15, 2023. The proposed amicus brief must be lodged at the time the motion is filed.

(Signed) Courtney D. Jones
Judge