

UNITED STATES TAX COURT
WASHINGTON, DC 20217

GEORGE LUNIW,)	
)	
Petitioner,)	
)	
v.)	Docket No. 17789-16SL
)	
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 petitioner and to respondent a copy of the pages of the transcript of the trial in the above case before Chief Special Trial Judge Lewis R. Carluzzo at Tampa, Florida, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

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

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
November 19, 2019

SERVED Nov 20 2019

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
2 October 30, 2019
3 George Luniw v. Commissioner
4 Docket No. 17789-16SL

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).

9 Section references contained in this bench
10 opinion are to the Internal Revenue Code of 1986, as
11 amended, in effect for the relevant period. Rule
12 references are to the Tax Court Rules of Practice and
13 Procedure.

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

22 This case was tried and submitted in Tampa,
23 Florida, on October 29, 2019. George Luniw appeared on
24 his own behalf. William T. Maule appeared on behalf of
25 respondent.

1 In a Notice of Determination Concerning
2 Collection Action(s) Under Section 6320 and/or 6330, dated
3 July 14, 2016 (notice), respondent determined that a levy
4 is an appropriate collection action with respect to
5 petitioner's liability for three frivolous return
6 penalties assessed pursuant to section 6702(a) for the
7 submission of a 2012 Form 1040, Individual Income Tax
8 Return, on three separate occasions during 2013. In a
9 supplemental notice of determination, dated September 14,
10 2017 (supplemental notice), the determinations made in the
11 notice were sustained. Our review under section 6330(d)
12 focuses on the determinations made in the supplemental
13 notice, see Kelby v. Commissioner, 130 T.C. 79 (2008),
14 rather than the notice, but the distinction is without any
15 difference under the circumstances of this case.

16 Because of findings made and issues resolved in
17 an Order dated March 8, 2018, we need now only decide
18 whether the submission of each 2012 Form 1040 constitutes
19 a frivolous return subject to a section 6702(a) penalty,
20 or whether either of the Forms 1040 submitted after the
21 first one submitted are merely copies of the first Form
22 1040 that should not give rise to a section 6702(a)
23 penalty. See Kestin v. Commissioner, 153 T.C. ____ (August
24 29, 2019). Furthermore, because the March 8, 2018, Order
25 recites the procedural history of the matter, we need only

1 repeat those facts relevant to what remains to be
2 resolved, and those facts are easily summarized.

3 On a date not disclosed in the record, but
4 apparently before April 15, 2013, respondent received a
5 Form 1040 from petitioner (first Form 1040). The first
6 Form 1040 satisfies the definition of a frivolous return,
7 and we need state nothing further on the point. See Crain
8 v. Commissioner, 737 F.2d 1417 (5th Cir. 1984).

9 A second 2012 Form 1040 (second Form 1040) was
10 received by respondent on August 8, 2013. The second Form
11 1040 was submitted by petitioner apparently in response to
12 a letter date June 17, 2013, advising petitioner that
13 respondent made changes to the first Form 1040. See sec.
14 6213(b)(1). Along with the second Form 1040, petitioner
15 submitted an affidavit of mailing in which the second
16 Form 1040 is characterized as a "corrected return". The
17 second Form 1040 was printed from a digital image of a
18 Form 1040 created by petitioner and apparently stored on
19 an electronic device owned by petitioner, or to which
20 petitioner has access. Both the first Form 1040 and the
21 second Form 1040 show identical entries and both bear
22 petitioner's original signature. The second Form 1040
23 also satisfies the definition of a frivolous return for
24 the same reasons that the first Form 1040 does and again,
25 we need say nothing more on the point.



1 A third 2012 Form 1040 (third Form 1040) was
2 received by respondent on July 3, 2013, apparently in
3 response to a letter also dated June 17, 2013, advising
4 petitioner that respondent considered the first Form 1040
5 to be a frivolous income tax return, subject to a section
6 6702(a) penalty. Like the second Form 1040, the third
7 Form 1040 was printed from a digital image of the Form
8 1040 created by petitioner and apparently stored on an
9 electronic device owned by petitioner, or to which
10 petitioner has access. The entries on the third Form 1040
11 are identical to the entries on the first and second Forms
12 1040, except it is unclear whether the third Form 1040
13 bears petitioner's original signature. In an affidavit
14 of mailing included with the third Form 1040 petitioner
15 characterizes the first Form 1040 as his "original" 1040
16 (actually he refers to the form as a "2040" but that
17 reference is an obvious error), and he again characterizes
18 the second Form 1040 as a "corrected 1040", but he
19 describes the third Form 1040 "enclosed" with the
20 affidavit as a "copy".

21 Keeping in mind that the burden of proof with
22 respect to the imposition of a section 6702(a) penalty
23 rests with respondent, see section 6703(a), petitioner's
24 characterization of the third Form 1040 as a "copy"
25 constrains us to find that the third Form 1040 did not

1 constitute the filing of "what purports to be a return of
2 a tax" within the meaning of section 6702(a)(1). See
3 Kestin v. Commissioner, 153 T.C. ___ (August 29, 2019).
4 Petitioner is not liable for a section 6702(a) penalty for
5 the submission of the third Form 1040. Otherwise,
6 respondent has met his burden of proof with respect to the
7 imposition of a section 6702(a) penalty for the first and
8 second Forms 1040. See secs. 6703(a) and 6751(b).

9 To reflect the foregoing and the matters
10 addressed in the order dated March 8, 2018, an appropriate
11 decision will be entered showing that petitioner is liable
12 for the section 6702(a) penalties assessed with respect to
13 the first and second Forms 1040, and that respondent may
14 proceed with collection of those liabilities as determined
15 in the supplemental notice.

16 This concludes the Court's bench opinion in this
17 case.

18 (Whereupon, at 10:19 a.m., the above-entitled
19 matter was concluded.)
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