IN CASE YOU MISSED IT – December 2025

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Almost every day, federal and state courts issue opinions that affect taxpayers. The IRS and state taxing authorities also publish guidance on myriad topics.

Each month, this column will review a selection of recent court cases or guidance that tax professionals should know about when advising their clients and preparing tax returns.

For more extensive details on any of these items, please feel free to reach out to the author.

Foulds —The Importance of Reading the Fine Print

Often, taxpayers fall behind on paying their outstanding income tax liabilities. They may wish to enter into a payment arrangement with the IRS, such as an installment agreement, an offer in compromise, or even being placed in currently not collectible status. One of the basic rules is that you must be in compliance with your current obligations for the IRS to consider any of these alternatives. That means you must have filed all of your tax returns that have become due. And, if you are not a salaried employee subject to income tax withholding, you must be making estimated tax payments as they become due. Otherwise, the IRS will not enter into an agreement with a taxpayer who would immediately fall out of compliance. A potentially sympathetic settlement officer will be unable to give any assistance in obtaining a collection alternative to a lien or levy.

Dr. Foulds was one such taxpayer. Her failure to file returns, combined with her failure to read the notices carefully, ultimately led to her losing her Tax Court case.

Dr. Foulds did not file federal income tax returns for any of the years from 2013 through 2019. The IRS prepared substitute returns for her under IRC section 6020(b), but inexplicably, only for the years 2014 and 2016. The IRS sent her statutory notices of deficiency for 2014 and 2016 by certified mail. Dr. Foulds never denied receiving the notices of deficiency, but she also failed to

file a petition in Tax Court contesting the deficiency that was determined for either year. This led to her downfall.

The IRS formally assessed the amounts determined to be due in its substitute returns and deficiency notices. With interest and penalties, she owed almost $730,000 by October of 2020. The IRS pursued collection of this outstanding amount and issued her a levy notice. Dr. Foulds retained counsel to help her submit a Form 12153 – Request for a Collection Due Process or Equivalent Hearing request in response to the levy notice. In addition to requesting a Collection Due Process (CDP) hearing, she checked the boxes on the Form for "I cannot pay balance" and also requested a "Lien Withdrawal."

Her Form 12153 also stated that she 1) "intend[ed] to challenge the assessments as it is [a substitute for return]," 2) "wishe[d] to [pursue] resolution on outstanding liabilities," and 3) "is working to become compliant and ... file outstanding returns."

Once the case was assigned to a settlement officer with the IRS Independent Office of Appeals, the settlement officer sent a letter setting forth the typical first steps that should be expected in any collection case: 1) scheduling a telephone CDP hearing date and 2) requesting: A) signed federal income tax returns for all of the missing years; B) proof of estimated tax payments; C) a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals; D) a completed Form 433-B, Collection Information Statement for Businesses; and E) copies of the financial documents that support the figures shown on the Form 433-A and Form 433-B.

None of this information was provided before the scheduled hearing date. Although her representative reached out and requested a postponement of the hearing so he could have additional time to gather the requested information, the items were still not provided by the time of the postponed hearing date.

While the rescheduled hearing occurred as arranged, the only argument raised by Dr. Foulds' representative was that she had prepared tax returns for 2014 and 2016 that reflected significantly lower liabilities than those on the substitute returns that had been prepared by the IRS. The representative did not raise any potential collection alternatives at the hearing or provide returns for any of the other years.

The settlement officer, having not received the requested financial documentation and noting that tax returns had still not been filed for the years 2013–2019, issued a notice of determination sustaining the levy notice. There was nothing that could be done for a taxpayer who was not trying to come into compliance. Dr. Foulds hadn't asked for any collection alternatives and the settlement officer couldn't offer any.

This time, however, Dr. Foulds responded to the notice of determination that she received and filed a timely petition in Tax Court under IRC section 6330(d)(1) challenging the determination upholding the notice of intent to levy with respect to her unpaid federal income tax liabilities for 2014 and 2016. Her challenge, however, was exclusively to the amounts of the underlying liabilities.

The court remanded the case to the Office of Appeals to verify that the statutory notices of deficiency for 2014 and 2016 had been properly issued to Dr. Foulds. The settlement officer was able to obtain a copy of each notice of deficiency, as well as the certified mailing lists, US Postal Service (USPS) Form 3877, Firm Mailing Book for Accountable Mail, which indicated that the notices had been sent to Dr. Foulds. (Note: although they were sent to her office address rather than her home address, Dr. Foulds explained that at that time it was her practice to have her mail delivered to her office rather than her home.) Additionally, Dr. Foulds never disputed that she had received the notices of deficiency. Therefore, the settlement officer was able to verify that the notices of deficiency had been properly mailed and issued a supplemental notice of determination sustaining the proposed levy.

The commissioner then filed a motion for summary judgment in the Tax Court proceeding. Dr. Foulds failed to file a response. Although the court could have then immediately found for the Commissioner on that ground alone under Tax Court Rule 121(d), it considered the motion on its merits and thus provided guidance for future litigants.

A taxpayer only has the right to challenge the underlying liability during a CDP hearing if they did not receive a statutory notice of deficiency for the tax year at issue or otherwise have a chance to dispute it. See IRC section 6330(c)(2)(B).

At both her CDP hearing and in this court case, the only issue that Dr. Foulds raised was that her underlying liabilities are incorrect. She did not understand that it was too late to make this argument.

She had not disputed the timely receipt of the notices of deficiency and the commissioner provided sufficient evidence to establish that the notices were in fact prepared and mailed (although the court acknowledges that there were some irregularities in the compliance with official IRS procedures).

Her failure to petition the court for redetermination after receiving the notices caused her to lose the right to challenge the underlying liability before the Office of Appeals or Tax Court.

The court then considered whether or not there was an abuse of discretion by the Office of Appeals that could otherwise allow her to prevail. This entails the Court considering 1) if there was proper verification by the settlement officer that the requirements of applicable law or administrative procedure were met, 2) if the settlement officer considered any relevant issues raised by Dr. Foulds, and 3) whether the settlement officer weighed "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of [Dr. Foulds] that any collection action be no more intrusive than necessary." IRC section 6330(c)(3).

The court was easily satisfied that proper verification occurred, given the evidence presented by the commissioner and the lack of dispute on this matter by Dr. Foulds.

Dr. Foulds failed to raise any issues besides her underlying liability for 2014 and 2016, which was a precluded argument, so there was no other issue for the settlement officer to consider.

Finally, there was no discussion of any collection alternatives or of having the levy withdrawn; therefore it was an easy decision for the court to hold that the Office of Appeals did not abuse its discretion in fulfilling its obligation under IRC section 6330(c)(3)(B). Appeals is required to consider only the issues that are actually raised by the taxpayer. The Court commented that "[G]enerally it would be anomalous and improper for us to conclude that [a settlement officer] abused [his] discretion ... in failing to ... consider arguments, issues, or other matter not raised by taxpayers or not otherwise brought to the attention of [the settlement officer]." Citing Magana v. Commissioner, 118 T.C. 488, 493 (2002).

The determination was therefore upheld.

Takeaway: It is very tempting for taxpayers to ignore notices from the IRS rather than dealing with them. Some notices—such as statutory notices of deficiency, or for partnerships under the Bipartisan Budget Act of 2015, Notices of Final Partnership Adjustment—have strict deadlines with significant ramifications. Failing to dispute deficiencies in a timely manner will cost the taxpayer the right to ever dispute the assessment in a prepayment forum.

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