

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 10a0193n.06

No. 08-2400

FILED
Mar 25, 2010
LEONARD GREEN, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

TOMOKO HOMZA,

Petitioner-Appellant,

v.

**ON APPEAL FROM THE UNITED
STATES TAX COURT**

**COMMISSIONER OF INTERNAL
REVENUE,**

OPINION

Respondent-Appellee.

_____ /

BEFORE: KEITH, CLAY, and GRIFFIN, Circuit Judges.

PER CURIAM. Petitioner, Tomoko Homza, appeals the July 23, 2008 order from the United States Tax Court granting summary judgment to Respondent, the Commissioner of Internal Revenue, as to Petitioner's tax liability and assessing penalties on the taxpayer. Petitioner specifically is appealing the denial of her motion to compel discovery in the Tax Court, claiming that the documents requested were statutorily required to be produced as part of the process of calculating her tax deficiencies and therefore were discoverable.

Petitioner filed two separate petitions with the Tax Court seeking review of determinations by the IRS Office of Appeals concerning her unpaid tax liability in 2000, 2001, 2002, and 2003. The first petition, Case No. 10719-06L, was filed June 6, 2006 concerning the tax years of 2000, 2001,

and 2002. Petitioner then filed a second petition, Case No. 3494-07L, on February 17, 2007 concerning the 2003 tax year. The Tax Court consolidated the petitions for opinion only, and proceedings continued for both petitions. The Commissioner moved for summary judgment on both petitions, which was granted. In the same order, the Tax Court denied Petitioner's motion to compel discovery. This timely appeal followed.

This Court reviews for abuse of discretion the claim that a motion to compel discovery should have been granted prior to an order granting summary judgment. *Abercrombie & Fitch Stores, Inc. v. American Eagle Outfitters, Inc.*, 280 F.3d 619, 627 (6th Cir. 2002); *March v. Levine*, 249 F.3d 462, 473 (6th Cir. 2001). In a case involving a collection-due-process hearing where the taxpayer does not challenge the underlying tax liability, the Tax Court and, in turn this Court, reviews the determination of IRS Office of Appeals for abuse of discretion. *Living Care Alternatives of Utica, Inc. v. United States*, 411 F.3d 621, 626 (6th Cir. 2005).

After consideration of the record on appeal, the briefs of the parties, and the relevant law, this Court is not persuaded that the Tax Court erred in granting summary judgment to the Commissioner or in denying Petitioner's motion to compel discovery. Because the Tax Court thoroughly articulated the reasoning that supports its order, the issuance of a detailed written opinion by this Court would be duplicative and serve no useful purpose.

Accordingly, we **AFFIRM** the judgment of the Tax Court upon the reasoning set forth by that court in its opinion and order filed on July 23, 2008.