FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11382

ANDREW J. FILIPOWSKI,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review of a Decision of the
U.S. Tax Court
Agency No. 5043-23L

Before JORDAN, ROSENBAUM, and LAGOA, Circuit Judges.

LAGOA, Circuit Judge:

Andrew Filipowski appeals the tax court's order granting the Commissioner of Internal Revenue's motion for summary judgment. The tax court affirmed the IRS's rejection of Filipowski's offer-in-compromise ("OIC") to settle $140 million in tax liability for $1.5 million. Filipowski argues that the IRS erred when it relied on erroneous facts to reject his OIC on public policy grounds. As such, Filipowski argues that the tax court erred by granting the IRS's motion for summary judgment when disputes over material facts remained. After careful review of the record and with the benefit of oral argument, we affirm.

I. FACTS AND PROCEDURAL BACKGROUND

In 1987, Filipowski founded Platinum Technology, Inc. ("Platinum"), a computer software company that reached $1 billion in revenue and became the eighth-largest computer software company in the world. Filipowski served as Platinum's president and chief executive officer and eventually sold the company for $3.5 billion in 1999. To offset his $110 million income from wages and selling his company during the 1999 tax year, Filipowski claimed losses from investments transferred to a partnership, New Millennium Trading, LLC, as part of a tax shelter program. After a tax court[1] later determined that the partnership was a "sham partnership" "created solely for tax avoidance purposes," the IRS assessed Filipowski's individual tax liability for his 1999 income.

In February 2018, the IRS issued a notice of deficiency stating that Filipowski could not claim $110 million in losses from the tax shelter, owed $32.5 million in tax liability, and was liable for an

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[1] *See New Millennium Trading, LLC v. Comm'r*, No. 06-tc-3439, 2017 WL 89130, at *13–14 (T.C. Jan. 10, 2017).

additional $13 million in accuracy-related penalties and $65.6 million in statutory interest. Filipowski did not challenge the notice of deficiency or the calculated tax liability. Besides applying about $21,000 in tax credits accrued from previous tax years to the amount owed, Filipowski did not make any payments towards the assessed liability.

Due to Filipowski's nonpayment, the IRS issued a notice of intent to levy and informed him of his right to request a "Collection Due Process" hearing under 26 U.S.C. § 6330. Filipowski requested a hearing and indicated his inability to pay the balance owed and his intent to seek an installment agreement or OIC. Filipowski, again, did not challenge the underlying tax liability.

During the § 6330 hearing, Filipowski, through his attorney, Adam Fayne, told the IRS that he was "very wealthy at one time" but lost most of his wealth over the years, and intended to liquidate his retirement accounts, which had a value of about $1.2 million, to fund an OIC. In addition, the IRS learned that Filipowski had "ownership interests in many companies and own[ed] real estate," all of which was encumbered by a creditor, DePasquale Trust, that purchased several banks' judgments against Filipowski. The Trust allowed Filipowski to draw an annual salary of up to $300,000. In a subsequent disclosure, Filipowski reported that he had a gross annual income of approximately $200,000, approximately $90,000 in cash, a Roth IRA account valued at $3.4 million, and monthly living expenses of about $34,500.

In May 2021, Filipowski submitted an OIC to settle his outstanding 1999 tax liabilities, which now totaled about $140 million after interest. Filipowski maintained that he was unable to pay the amount owed and offered $1.5 million instead, to be paid $1,000 per month for twenty-three months with the remaining balance due at the conclusion of those twenty-three months.

The OIC was forwarded to the IRS's collections department ("Collections") to determine whether Filipowski could pay the $140 million owed. Relevant to the present appeal, the investigation revealed four facts that Filipowski argues the IRS erroneously relied on in rejecting his OIC. First, in its investigation of the DePasquale Trust, Collections learned that Filipowski and Thomas DePasquale were former business colleagues and that DePasquale formed the trust and bought the banks' judgments "for pennies on the dollar." Collections concluded that the DePasquale Trust was a sham that allowed Filipowski to position his assets to avoid collection activity. Second, Collections learned that Filipowski belatedly filed his tax returns for the 2015 through 2018 tax years and only did so after the IRS's prompting. Third, though the IRS later corrected itself, Collections mistakenly thought that Filipowski's Coinbase stock, which had a market value of less than $4,000, was unreported cryptocurrency. And fourth, Collections learned that Filipowski had an unreported Canadian investment account valued at $1,000.

In its report, Collections calculated that Filipowski had $5.3 million net equity in assets, $569,000 in future income value, and a reasonable collection potential ("RCP") of $5.9 million. Despite recognizing that the calculated RCP meant that Filipowski was likely unable to pay the $140 million owed, Collections recommended denying the OIC on public policy grounds "since acceptance would be detrimental to the interests of fair tax administration." Collections notified Filipowski of its preliminary decision and forwarded its recommendation to an IRS appeals officer for final determination.

The IRS appeals officer permitted Filipowski to submit additional support for his OIC or challenges to Collections's recommendation. In a series of letters and phone calls, Filipowski, through Fayne, disputed the RCP and the facts relied on to calculate it. Filipowski also disclosed his recently-diagnosed Parkinson's disease, which he claimed further encumbered his ability to pay, but did not attempt to negotiate collection alternatives. The IRS appeals officer issued a notice of determination concluding that "acceptance of [Filipowski's] offer would have a negative impact on compliance by the general public," rejecting the OIC on public policy grounds, and sustaining the levy.

Filipowski filed a petition in the tax court to contest the IRS's rejection of his OIC. After it filed the administrative record, the IRS moved for summary judgment and argued that there were no genuine disputes of material fact as to whether the IRS abused its discretion in rejecting Filipowski's OIC. In response, Filipowski identified facts relied on that he alleges were either not supported by or contrary to the record, such as the IRS's characterization of him as a "high income non-filer," his alleged undisclosed cryptocurrency and foreign assets, his involvement in the DePasquale Trust, and his ability to pay after being diagnosed with Parkinson's disease.

The tax court granted the IRS's motion and denied Filipowski's petition. It concluded that the IRS's rejection of the OIC on public policy grounds was "amply support[ed]" by the "source and magnitude of the underlying liability involved in this case, coupled with [Filipowski's] history of filing delinquent returns."

Filipowski filed this timely appeal.

II. STANDARD OF REVIEW

"We review *de novo* the tax court's grant of summary judgment." *Roberts v. Comm'r*, 329 F.3d 1224, 1227 (11th Cir. 2003) (per curiam) (citation modified). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In our review of the tax court's decision, we "review the facts and apply the same legal standards as the tax court." *Roberts*, 329 F.3d at 1227 (citation modified). When the underlying tax liability is not at issue, a tax court reviews an administrative determination for abuse of discretion. *Kendricks v. Comm'r*, 124 T.C. 69, 75 (2005). The IRS abuses its discretion when it acts "arbitrarily, capriciously, or without sound basis in fact or law." *Vinatieri v. Comm'r*, 133 T.C. 392, 400 (2009). Because Filipowski does not challenge his underlying tax liability, our *de novo* review is an analysis of whether the IRS abused its discretion in rejecting Filipowski's OIC. *See* 26 C.F.R. § 301.7122-1(c)(1) ("[T]he decision to accept or reject an [OIC], as well as the terms and conditions agreed to, is left to the discretion of the Secretary."); *Estate of Duncan v. Comm'r*, 890 F.3d 192, 197 (5th Cir. 2018) ("The abuse of discretion standard . . . governs our review of IRS Appeals' rejection of an offer-in-compromise").

III. ANALYSIS

On appeal, Filipowski argues that the IRS erred by exercising its discretion to reject his OIC and that the tax court erred by granting summary judgment because there remained disputes of material fact. We address each in turn.

Pursuant to the tax code, the IRS "may compromise any civil or criminal case arising under the internal revenue laws" and "shall prescribe guidelines for officers and employees of the [IRS] to determine whether an offer-in-compromise is adequate and should be accepted to resolve a dispute." 26 U.S.C. § 7122(a), (d). These guidelines provide three grounds upon which the IRS may accept an OIC: (1) doubt as to liability; (2) doubt as to collectability; and (3) promotion of effective tax administration. 26 C.F.R. § 301.7122-1(b). But "[n]o compromise to promote effective tax administration may be entered into if compromise of the liability would undermine compliance by taxpayers with the tax laws." *Id.* § 301.7122-1(b)(3)(iii). In other words, the IRS "may take into account public policy and tax administration concerns in determining whether an offer to compromise is acceptable." Rev. Proc. 2003-71 § 6.03.

The IRS instructs its officers and employees that "[d]ecisions to reject offers for [public policy] reason[s] should be rare." Internal Revenue Manual 5.8.7.7.2(2) (emphasis removed). When they occur, OIC rejections on this basis are grounded "on the fact that public reaction to the acceptance of [an] offer could be so negative as to diminish future voluntary compliance by the general public." *Id.* Indeed, the tax code mandates that the IRS disclose accepted OIC's to the general public "to the extent necessary to permit inspection of any [OIC] under section 7122 relating to the liability for a tax," and it is this inspection that informs the IRS's decision to accept or reject an OIC. 26 U.S.C. § 6103(k)(1).

Here, we conclude that the IRS did not abuse its discretion by rejecting Filipowski's OIC on public policy grounds. Filipowski does not point to a provision in the tax code or case law where the IRS is required to accept a taxpayer's OIC. To the contrary, the tax regulations plainly state that "the decision to accept or reject an [OIC], as well as the terms and conditions agreed to, is left to the discretion of the [IRS]." 26 C.F.R. § 301.7122-1(c)(1); *see also Estate of Duncan*, 890 F.3d at 200 (explaining that the IRS "generally declines offers that are less than the RCP").

The undisputed facts are an insurmountable hurdle for Filipowski's argument on appeal. The undisputed facts show that on his 1999 tax returns, Filipowski tried to use a sham partnership to avoid tax liability on $110 million in income after he successfully sold his company for $3.5 billion. Moreover, the undisputed facts show that Filipowski's 1999 tax liabilities presently total $140 million and that he offered to pay $1.5 million to resolve that liability. In addition, though Filipowski proffers reasons for his delayed filings, he does not dispute that he belatedly filed his tax returns for the tax years 2015 through 2018 or that he only did so after IRS prompting. The IRS, thus, did not abuse its discretion in rejecting Filipowski's OIC because acceptance—in light of the sheer magnitude of the amount Filipowski owes, the delta between that amount and what Filipowski offered to resolve that liability, and Filipowski's consistent failure to comply with annual tax reporting requirements—could "diminish future voluntary compliance by the general public." *See Fargo v. Comm'r*, 447 F.3d 706, 714 (9th Cir. 2006) (IRS did not abuse its discretion in rejecting 7% OIC in part because (1) the taxpayers invested in tax shelters, (2) the taxpayers were not the victims of fraud or deception, (3) the delay in adjudication was understandable, and (4) the primary incentives created by requiring full payment are to encourage taxpayers to research investments more carefully and keep in better contact with financial agents).

Filipowski, however, argues that the tax court relied on disputed material facts to deny his petition and thus erred by granting summary judgment. Specifically, he contests the IRS's characterization of him as a "high income non-filer," the IRS's conclusions that he concealed his ownership of cryptocurrency and failed to disclose foreign assets, the IRS's failure to consider his recently-diagnosed Parkinson's disease, and the IRS's conclusion that he was illicitly affiliated with the DePasquale Trust. Though these allegedly disputed facts may speak to whether Filipowski's RCP was properly calculated and whether the IRS could collect on the $140 million debt, the IRS did not abuse its discretion, based on the undisputed facts, in rejecting Filipowski's OIC on public policy grounds. Based on the undisputed facts, we therefore conclude that the tax court did not err in granting the IRS's motion for summary judgment.

IV. CONCLUSION

For the above reasons, we affirm the tax court's denial of Filipowski's petition.

AFFIRMED.