

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 26 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RALPH TASHJIAN,

Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

No. 07-72481

Tax Ct. No. 14111-05L

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Argued and Submitted January 13, 2009
San Francisco, California

Before: WALLACE, FARRIS and McKEOWN, Circuit Judges.

Ralph Tashjian appeals from a Tax Court order allowing the Internal Revenue Service to levy his assets. Tashjian contested the underlying tax liability in his collection due process hearing, arguing that he was not given the required notice of an audit of tax deductions for marketing expenses taken by Lumenetics, a

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

partnership in which he was a partner. The Tax Court, citing Celotex Corp. v. Edwards, 514 U.S. 300, 313 (1995), held that Tashjian's challenges to the underlying tax liability amounted to "an impermissible collateral attack" on the prior partnership-level proceedings in Lumenetics v. Comm'r of Internal Revenue, 64 T.C.M. (CCH) 1161 (T.C. 1992). Although the Tax Court noted that jurisdictional challenges to Lumenetics were still permissible, it held that the proper means of raising such claims "would have been to file a motion to vacate that decision."

Tashjian conceded in his brief to the Tax Court that his attempt to challenge the Lumenetics decision in this collection due process proceeding is indeed an impermissible collateral attack: "[t]he proper course of action to challenge the tax and interest assessments on the grounds raised herein would be to petition the Tax Court for leave to file a Motion to Vacate its decision." Tashjian's claims regarding notice of the Lumenetics audit, Dennis DiRicco's acting as Tax Matters Partner in the Lumenetics proceeding, and the imposition of tax liability and penalties resulting from the Lumenetics proceeding are dependent on his ability to attack the Lumenetics proceeding. Because Tashjian has already conceded that he cannot challenge the underlying tax liability via this appeal, we affirm the decision of the Tax Court.

Tashjian also argues that the government's alleged failure to return records seized in a prior investigation denied him due process. The Tax Court found that the documents in question "had nothing to do with the partnership." Tashjian's testimony reflected that the seized records did not include records of the partnerships at issue in this case. The Tax Court's finding was not clear error; therefore, any failure to return records did not violate Tashjian's due process rights. See Metro Leasing and Dev. Corp. v. Comm'r, 376 F.3d 1015, 1018-19 (9th Cir. 2004) (Tax Court findings are reviewed for clear error).

AFFIRMED.