

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DALE A. WALLACE,)
)
Petitioner(s),) **SYM**
)
v.) Docket No. 4899-14 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER AND DECISION

This section 6330(d)¹ case is before the Court on respondent's motion for summary judgment, filed November 21, 2014. By Order dated December 1, 2014, petitioner's objection, if any, to respondent was made due on or before December 22, 2014. No objection has been submitted by petitioner.² That being so, and because nothing in the record suggests that we should do otherwise, we proceed as though the below-summarized facts relied upon by respondent in support of his motion are not in dispute.

In the Notice of Determination Concerning Collection Action(s) Under Sections 6320 and/or 6330, dated February 7, 2014 (notice), respondent determined that a levy is an appropriate collection action with respect to petitioner's outstanding 2011 Federal income tax liability (underlying liability). The underlying liability arose from assessments made pursuant to the income tax liability reported on, but unpaid with, petitioner's 2011 Federal income tax return. Petitioner does not challenge the existence or amount of the underlying liability in this proceeding.

¹ Section references are to the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

² In the Order dated December 1, 2014, petitioner was advised that his failure to respond could result in the granting of respondent's motion. See Rule 121(d); see e.g., Lunsford v. Commissioner, 117 T.C. 183, 187 (2001).

According to the petition, petitioner requests that respondent levy on his savings and 401K instead of petitioner's real property. Petitioner contends his deceased wife owned the property, and he transferred it to her family. The record reflects that petitioner transferred the property to his deceased wife's family on November 21, 2012, nine days after respondent imposed a lien on the property.

In his request for a section 6330(b) administrative hearing, petitioner proposed an installment agreement as a collection alternative to the levy. After reviewing petitioner's financial information, respondent's Appeals Office advised petitioner that he would not qualify for an installment agreement unless he partially satisfied the balance due by liquidating some of his investment accounts and real estate holdings, but petitioner refused to do so.

Because petitioner does not dispute the existence or the amount of the underlying liability, respondent's determination to reject petitioner's collection alternative and proceed as determined in the notice is reviewed for abuse of discretion. See Goza v. Commissioner, 114 T.C. 176 (2000). In so doing, we note that it is not an abuse of discretion when respondent's Appeals Office rejects an installment agreement because a taxpayer refuses to liquidate assets to satisfy his tax liabilities. See Boulware v. Commissioner, T.C. Memo. 2014-80, at *10. We see no reason to depart from that principle in this case. Respondent's rejection of petitioner's collection alternative is not an abuse of discretion.

The facts relied upon by respondent in support of his motion show that in all other respects respondent has proceeded as required by section 6330, and nothing in the petition, which is the only thing petitioner submitted, suggests otherwise. We are satisfied that there are no material facts in dispute in this case, and further that respondent is entitled to decision as a matter of law. See Rule 121.

Premises considered, it is

ORDERED that respondent's motion is granted. It is further

ORDERED AND DECIDED that respondent may proceed with collection action as determined in the notice.

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED:

JUL 31 2015