

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

KRISHNAIAH JANUMPALLI,)	
)	
Petitioner,)	
)	
v.)	Docket No. 31879-15SL.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
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Respondent)	
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ORDER AND DECISION

This is a collection review case involving a proposed levy to collect petitioner’s outstanding Federal income tax liability for the taxable (calendar) year 2012. In a Notice Of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated November 30, 2015, respondent’s Appeals Office sustained the proposed levy.¹ Thereafter petitioner commenced the instant action pursuant to section 6330(d)(1).

Presently pending before the Court is respondent’s Motion For Summary Judgment, filed September 1, 2016, pursuant to Rule 121, and the supporting Declaration of Carole Gioeli, also filed September 1, 2016. By Order dated September 2, 2016, the Court directed petitioner to file a response to respondent’s motion. On September 22, 2016, petitioner filed a Reply to respondent’s motion objecting to its granting.

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended. All Rule references are to the Tax Court Rules of Practice and Procedure.

Background

Petitioner timely filed a Federal income tax return for 2012, reported a substantial liability, but paid less than 10 percent through withholding and did not remit any payment with the return.

Respondent sent a Final Notice Of Intent To Levy And Notice Of Your Right To A Hearing, dated November 28, 2013, to petitioner for 2012. In response, petitioner timely filed a Request For A Collection Due Process Or Equivalent Hearing (Form 12153). In his request, petitioner disputed the underlying liability for 2012, stating that he wanted to “use prior year losses to offset [his underlying tax liability]”. He also checked the collection alternative boxes for “Offer in Compromise” and “I Cannot Pay Balance”.

After a preliminary contact letter, respondent’s settlement officer (SO) sent petitioner a letter on March 7, 2014, scheduling a telephonic conference on April 1, 2014, and requesting: (1) “Completed Collection Information Statement Form 433-A for individuals”; and (2) a “Form 656 with \$186 application fee and required first payment”.

On March 18, 2014, respondent’s SO received a copy of petitioner’s amended Federal income tax return for 2012 along with a letter requesting that respondent “apply previous years losses” to his underlying liability for 2012.

On April 1, 2014, respondent’s SO held a Collection Due Process (CDP) hearing with petitioner. Petitioner stated that he filed an amended Federal income tax return for 2012 and that “the losses should carryback to the 2010 balance”. Petitioner did not, however, submit the information previously requested by the SO.

On August 11, 2014, respondent sent petitioner a notice of deficiency for 2012. Petitioner timely commenced an action for redetermination at docket No. 26621-14 challenging the notice of deficiency. The Court ultimately dismissed the case on June 18, 2015, because petitioner failed to pay the filing fee after repeated orders from the Court.

On or about July 28, 2015, respondent’s SO was notified that petitioner appointed Jonathan Greff as his power of attorney (POA).

On November 3, 2015, respondent's SO contacted petitioner's POA stating that the assessment for 2012 had posted and offered the option of an installment agreement.

On November 6, 2015, petitioner's POA faxed a Form 433-D, Installment Agreement, to respondent's SO. Petitioner subsequently contacted respondent's SO informing her that: (1) his POA was mistaken and that he did not want to enter into an installment agreement; and (2) he disputed the underlying liability.

On November 17, 2015, petitioner's POA left a message for respondent's SO informing her that petitioner decided to file for audit reconsideration.

On November 30, 2015, respondent issued a notice of determination sustaining the proposed levy action. Petitioner then filed a timely appeal to this Court from the notice of determination disputing the underlying liability. See sec. 6330(d)(1).

Discussion

Where the validity of the underlying tax liability is properly at issue, the Court reviews the Commissioner's administrative determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Where the underlying tax liability is not properly at issue, the Court reviews respondent's determination for abuse of discretion. Id. at 182. An abuse of discretion occurs if the Appeals Office exercises its discretion "arbitrarily, capriciously, or without sound basis in fact or law". Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b). In the instant case respondent's Motion For Summary Judgment is well founded based on the averments therein and the declaration and related exhibits attached thereto.

Throughout the administrative and judicial processes, petitioner has sought to challenge his underlying tax liability for 2012. However, he is legally barred

from doing so if he had a prior opportunity to do so. See sec. 6330(c)(2)(B). Here petitioner commenced an action for redetermination in this Court at docket No. 26621-14 for 2012. The Court dismissed that case because petitioner failed to pay the filing fee. Thus, petitioner may not in the instant case seek to challenge his underlying liability for 2012.²

To the extent that petitioner may seek, in the alternative, a collection alternative, it is generally incumbent on the taxpayer to provide requisite financial information to permit, for example, evaluation by the settlement officer of the taxpayer's ability to pay. See, e.g., secs. 6159, 7122; Kindred v. Commissioner, 454 F.3d 688, 697 (7th Cir. 2006); Olsen v. United States, 414 F.3d 144, 151 (1st Cir. 2005); Murphy v. Commissioner, 125 T.C. 301, 315 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Wright v. Commissioner, T.C. Memo. 2012-24. Here petitioner failed to provide a completed Form 433-A or Form 656. Furthermore, petitioner explicitly told respondent's SO that he did not want to enter into an installment agreement. Under these circumstances it would not be an abuse of discretion to deny petitioner a collection alternative.

Finally, in the instant case, the Appeals Office properly verified that the requirements of all applicable laws and administrative procedures were met in the processing of petitioner's case and that the proposed levy action balances the Government's interest in the efficient collection of taxes with petitioner's concerns that the collection action be no more intrusive than necessary.

In sum, the Appeals Office did not abuse its discretion in this case.

Premises considered, it is

ORDERED that this case is stricken for trial from the Court's October 31, 2016, San Francisco, California trial session. It is further

² Whether petitioner may seek audit reconsideration from respondent is not a matter that the Court decides, as audit reconsideration is an administrative remedy conducted outside the auspices of the Court.

Also, merely as an observation, the Court notes that in the case of an individual sec. 1211(b) generally limits the allowance of a capital loss to \$3,000 per year.

ORDERED that respondent's Motion For Summary Judgment, filed September 1, 2016, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the proposed collection action (levy) in respect of petitioner's outstanding income tax liability for the taxable (calendar) year 2012, as determined by respondent's Appeals Office in its Notice Of Determination dated November 30, 2015, upon which notice the instant case is based.

Petitioner is advised that he need not appear at the Court's October 31, 2016 San Francisco, California trial session because this case will not be called from the calendar at that time given the action taken by the Court in this Order And Decision.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Entered: **OCT 03 2016**