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

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| TARENCE BASHAWN MANNING, | ) | |
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| Petitioner, | ) | |
| | ) | |
| v. | ) | Docket No. 10408-16 L. |
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| COMMISSIONER OF INTERNAL REVENUE, | ) | |
| | ) | |
| Respondent | ) | |
| | ) | |

## ORDER AND DECISION

This collection review case is before the Court on respondent's Motion for Summary Judgment, along with a supporting Declaration, filed February 8, 2017. Respondent seeks to sustain a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated March 30, 2016, upholding a proposed levy action for the taxable years 2007 and 2008.[1] Although the Court directed petitioner to file a Response to respondent's motion, he failed to do so. As discussed below, there are no genuine issues of material fact in this case, and the Court concludes that respondent is entitled to judgment as a matter of law as provided herein.

Background[2]

Petitioner timely filed Federal income tax returns for the 2007 and 2008 taxable years. The Internal Revenue Service (IRS) subsequently selected the returns for examination, and on January 7, 2011, respondent issued to petitioner a notice of deficiency for 2007 and 2008. The record indicates that the notice was

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[1]Unless otherwise indicated, 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]The record establishes and/or the parties do not dispute the following background facts.

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sent to petitioner by certified mail, and petitioner has at no time disputed receipt of the notice of deficiency. Petitioner did not file a Tax Court petition in response to the notice. However, on February 23, 2011, he did file a petition under 11 U.S.C. Chapter 13 with the U.S. Bankruptcy Court for the Middle District of Florida. The Internal Revenue Service (IRS) filed a proof of claim in petitioner's bankruptcy case, including for the proposed 2007 and 2008 assessments. The bankruptcy case was dismissed on November 29, 2011. Again, no Tax Court petition was filed, and on June 11, 2012, assessments for 2007 and 2008 were made and notices of balance due were issued to petitioner. Petitioner failed to remit payment.

On September 3, 2015, respondent issued to petitioner a notice of intent to levy for 2007 and 2008. Petitioner thereafter timely submitted a Form 12153, Request for a Collection Due Process or Equivalent Hearing, in which he disputed the proposed levy action and gave as the reason for such dispute: "Do not understand the amount I owe." He also indicated interest in a collection alternative in the form of an offer in compromise.

The IRS Office of Appeals (Appeals Office) sent to petitioner a letter dated February 3, 2016, scheduling a telephone hearing for February 29, 2016, and requesting financial information including a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals; signed income tax returns for 2010, 2011, 2012, and 2013; and a Form 656, Offer in Compromise. The letter further requested that such items be provided within 14 days, with the exception of tax returns, for which 21 days was allotted. Petitioner failed to participate in the scheduled telephone hearing and he did not submit to the Appeals Office any financial information necessary to evaluate his eligibility for an alternative to the proposed collection action.

On March 30, 2016, respondent issued to petitioner the aforementioned notice of determination sustaining the proposed levy action for 2007 and 2008. Petitioner invoked the Court's jurisdiction under section 6330 by filing a timely petition for review, stating therein: "I don't understand how my taxes are that high for the following years. I pay taxes weekly."[3]

[3]Petition resided in Florida at the time the petition was filed.

Discussion

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). The Court may grant summary judgment only if there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law in favor of the moving party. Rule 121(a), (b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Respondent, as the moving party, bears the burden of proof. FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000). The party opposing summary judgment must set forth specific facts which show that a question of genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Where the opposing party fails to respond to a motion for summary judgment, as is the case here, the Court may enter a decision against him. See Aguirre v. Commissioner, 117 T.C. 324, 327 (2001). Although the Court could grant respondent's motion in the light of petitioner's failure to file a response, we have reviewed the record and conclude that respondent is entitled to summary judgment on the merits of the case.

Section 6331(a) authorizes the Secretary to levy upon property and property rights of a taxpayer liable for taxes who fails to pay those taxes within 10 days after a notice and demand for payment is made. Section 6331(d) provides that the levy authorized in section 6331(a) may be made with respect to "unpaid tax" only if the Secretary has given written notice to the taxpayer 30 days before the levy. Section 6330(a) requires the Secretary to send a written notice to the taxpayer of the amount of the unpaid tax and of the taxpayer's right to a section 6330 hearing.

If a section 6330 hearing is requested, the hearing is to be conducted by the Appeals Office, and, at the hearing, the officer conducting the conference must verify that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(b)(1), (c)(1). The taxpayer may raise at the hearing "any relevant issue relating to the unpaid tax or the proposed levy". Sec. 6330(c)(2)(A). The taxpayer may also raise challenges to the existence or amount of the underlying tax liability at a hearing if the taxpayer did not receive a statutory notice of deficiency with respect to the underlying tax liability or did not otherwise have an opportunity to dispute that liability. Sec. 6330(c)(2)(B); see Montgomery v. Commissioner, 122 T.C. 1 (2004).

This Court has jurisdiction under section 6330 to review the Commissioner's administrative determinations. Sec. 6330(d); see Iannone v. Commissioner, 122 T.C. 287, 290 (2004). Where the underlying tax liability is properly at issue, the

Court reviews the determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Where the underlying tax liability is not at issue, the Court reviews the determination for abuse of discretion. Id. at 182.

Although petitioner stated in the petition that he does not understand how his taxes for the years in issue were computed, the record reflects that petitioner received a notice of deficiency for 2007 and 2008 and did not timely petition the Court for a redetermination under section 6213(a). Consequently, he is precluded under section 6330(c)(2)(B) from disputing the underlying tax liabilities in this proceeding. Under the circumstances, we review respondent's determination for abuse of discretion. Goza v. Commissioner, 114 T.C. at 182. Whether an abuse of discretion has occurred depends upon whether the exercise of discretion is without reasonable basis in fact or law. Freije v. Commissioner, 125 T.C. 14, 23 (2005).

The record shows that petitioner failed to participate in the administrative hearing and he did not present a challenge to the appropriateness of the proposed collection action, provide personal financial information necessary to evaluate his eligibility for a collection alternative, or file delinquent tax returns. The general rule in this Court is that, on appeal of a collection determination, the Court will limit its review to those issues properly raised during the collection hearing. Giamelli v. Commissioner, 129 T.C. 107, 114-115 (2007); Magana v. Commissioner, 118 T.C. 488, 493 (2002). Thus, we do not consider these matters here. See Rule 331(b)(4).

The record (which includes transcripts of accounts) shows that the Appeals Office properly verified that the requirements of any applicable law or administrative procedure were met in processing this case. Sec. 6330(b)(1), (c)(1). Moreover, we are satisfied on this record that the Appeals Office properly balanced the need for efficient collection of taxes with the legitimate concern of petitioner that any collection be no more intrusive than necessary.

In sum, we conclude that there are no genuine issues of material fact for trial and that respondent's determination to proceed with collection was not an abuse of discretion.

Premises considered, it is

ORDERED that respondent's Motion for Summary Judgment, filed February 8, 2017, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with collection action for taxable years 2007 and 2008, as determined in the notice of determination, dated March 30, 2016, upon which this case is based.

**(Signed) Daniel A. Guy, Jr.**
**Special Trial Judge**

ENTERED: **MAR 20 2017**