UNITED STATES TAX COURT
WASHINGTON, DC 20217

KEITH CHAMBERS BROWN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 4894-16SL.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

O R D E R

This "collection due process" ("CDP") case is an appeal brought under 26 U.S.C. section 6330(d), seeking our review of a "Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330" dated January 27, 2016, by the Office of Appeals of the Internal Revenue Service ("IRS"). The notice upholds a decision by the agency to file a notice of lien to collect the unpaid Federal income tax liability of petitioner Keith Chambers Brown for the years 2011, 2012, and 2013.

On April 13, 2017, respondent (the IRS) filed a motion for summary judgment. We will deny the IRS's motion for the reasons stated herein.

Background

Drawing all inferences in favor of Mr. Brown, we assume the following facts shown in the IRS's motion and Mr. Brown's petition:

Mr. Brown operates a construction business. He must borrow money from banks in order to operate his business. From 2009 through 2014 his business declined, and his Federal income tax liabilities for 2011, 2012, and 2013 (which he does not dispute) went unpaid to the extent of a total of about $30,000.

SERVED Apr 14 2017

In late September 2015 he received a notice of the filing of a Federal tax lien against him. This was problematic for him, because (as he stated in his petition) "with a lien on my record I will be unable to borrow money to make an income to pay this [tax liability] back." Mr. Brown timely filed with the IRS a Form 12153 "Request for a Collection Due Process or Equivalent Hearing", on which he requested withdrawal of the lien and an Offer in Compromise ("OIC").

On December 15, 2015, IRS Appeals sent Mr. Brown its first letter, which scheduled a telephonic hearing for less than a month later on January 13, 2016. (We note that the holidays intervened.) The letter also explained that, in order to be eligible for an OIC, Mr. Brown would need to file his overdue tax return for the year 2014.

The telephone conference took place as scheduled on January 13, 2016. Mr. Brown stated that he had not filed his 2014 return yet but that he should be able to do so within 30 days. The Appeals officer did not grant an extension of 30 days but advised Mr. Brown that Appeals "will have to issue a determination letter sustaining the lien."

True to her word, the Appeals officer processed the case promptly, and on January 27, 2016--just 14 days after the telephone conference--Appeals issued its notice of determination upholding the lien filing and stating that "[c]ollection alternatives [such as an OIC] were not considered because you are not in compliance with filing your return for December 31, 2014."

Appeals thus handled the case in a month and a half--commencing it on December 15, 2015, and concluding it on January 27, 2016--and its entire communication with the taxpayer apparently consisted of one letter and one telephone conversation.

Mr. Brown alleges, and for purposes of the IRS's motion we assume, that despite Appeals's adverse determination, he did thereafter file his 2014 return on February 25, 2016. The next day he timely mailed his petition to this Court, asking us to review Appeals' determination.

More than a year after the petition was filed, the Commissioner moved for summary judgment on April 13, 2017 (i.e., 60 days before the trial calendar at which this case will be tried, which is the last day permitted by Rule 121(a) for filing a motion for summary judgment).

Discussion

I. Summary judgment.

The issue now before us is whether Appeals erred in sustaining the lien and denying an OIC; but in a CDP case we review Appeals' determination for an abuse of discretion, a rather forgiving standard of review. However, we now address that issue in the context of a summary judgment motion under Tax Court Rule 121. In this context, the party moving for summary judgment (the IRS) must present evidence to "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(b). To resist summary judgment, the non-moving party must "set forth specific facts showing that there is a genuine dispute for trial", but he has this obligation only "[w]hen a motion for summary judgment is made and supported as provided in this Rule". Rule 121(d). In ruling on a motion for summary judgment, factual inferences will be drawn in the manner most favorable to the non-movant (here, Mr. Brown). See Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985).

Mr. Chambers elected this Court's "small case" procedures pursuant to 26 U.S.C. section 7463 and Tax Court Rules 170-174. Under those procedures, cases are handled "as informally as possible, consistent with orderly procedure." Rule 174(c). A motion for summary judgment in a small case is not improper but is less common than in regular cases. If a motion for summary judgment is granted in a small case and decision is entered without trial, the taxpayer--who elected informal procedures--may feel that he did not get his day in court. We acknowledge that a motion for summary judgment could be helpful and appropriate in some small cases, but we think this is not such a case, for the reasons we now explain.

II. Analysis

The flaw in Mr. Brown's CDP hearing on which Appeals based its determination was his failure to file his 2014 return. He was told by letter of December 15, 2015, to produce the overdue return in less than a month; and when he explained that he needed 30 more days, no additional time was given. We cannot say definitively whether this was an unreasonable deadline. If there was good reason for the denial of more time, then presumably we should sustain Appeals' decision; but the record before us gives no reason that the Appeals officer denied Mr. Brown any additional time. There is no indication of Mr. Brown's having been unresponsive, nor of prior incidents of delay on his part.

"[S]etting unreasonable deadlines can constitute an abuse of discretion". Ang v. Commissioner, T.C. Memo. 2014-53. In the admittedly anecdotal experience of the undersigned judge, the month-and-a-half duration of this CDP case seems very short (an impression that, if incorrect, the IRS could correct at trial). On the one hand, we must applaud the efficiency of an Appeals officer who processes her business so briskly; but on the other hand, it is possible, under the few facts we have, that this denial was not reasonable. The IRS's motion for summary judgment that was filed more than a year after Appeals was finished with the case was timely, but its deliberate submission did not vindicate the pace of Appeals' handling of the case.

Drawing all inferences in favor of Mr. Brown, we cannot say that the IRS's motion shows that there is no genuine dispute of material fact as to the fairness of the scheduling demands placed on Mr. Brown at the CDP hearing. If Appeals did deny him a reasonable amount of time to file his overdue 2014 return, then that denial was an abuse of discretion. This issue can be addressed at trial.

It is therefore

ORDERED that the IRS's motion for summary judgment filed February 14, 2017, is denied. This case will proceed to trial. Mr. Brown should understand that we have not yet decided whether the schedule that Appeals gave to him was unreasonable, nor whether Appeals abused its discretion. Rather, he should come to trial ready to prove that he was responsive to Appeals, that he really did file his return in February 2016 as he alleges, and that he was (and is) otherwise ready to show his entitlement to a collection alternative. If we hold in his favor that Appeals abused its discretion, then the likely remedy would be for us to remand the case to Appeals so that he can have a supplemental hearing, at which Appeals would consider his complete information. But if he fails to show us at trial that he really is ready for a prompt, productive supplemental hearing before Appeals, then we would likely deny a remand, since we do not order a "futile" remand. See Lunsford v. Commissioner, 117 T.C. 183, 189 (2001).

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
April 14, 2017