

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LEE DOUGLAS WALKER,)
) **SD**
)
 Petitioner,)
)
)
 v.) Docket No. 27754-15 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
)
 Respondent)

ORDER

This collection review case, involving a proposed levy action, is before the Court on respondent's Motion for Summary Judgment, filed March 22, 2017. On April 20, 2017, petitioner filed a Response in opposition to respondent's motion

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Florida 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, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The moving party bears the burden of showing that no genuine issue exists as to any material fact and that he is entitled to judgment on the substantive issues as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (interpreting Fed. R. Civ. P. 56 on which Rule 121 was modeled); Espinoza v. Commissioner, 78 T.C. 412, 416 (1982). In deciding whether to grant summary judgment, we view the facts and the inferences drawn from them in the light most favorable to the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985).

Petitioner alleges in his response in opposition to respondent's motion that the Office of Appeals erred in (1) assessing his 2005 tax liability and (2) determining that he had not filed tax returns for the taxable years 2009, 2010,

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2012, and 2013. The record shows that petitioner filed a tax return for 2005 reporting no tax due. On April 14, 2008, however, respondent assessed additional tax of \$24,562 for reasons that remain unclear. Respondent's memorandum of law in support of his motion for summary judgment acknowledges that this additional assessment was made for "reasons that remain unclear from the administrative record." Similarly, although respondent's records indicate that petitioner did not file tax returns for 2009, 2010, 2012, and 2013, petitioner has produced a copy of his purported tax return for 2012.

Drawing all factual inferences in the light most favorable to petitioner, we conclude that respondent has not established that there are no genuine issues of material fact in dispute. Under the circumstances, the Court will remand this matter to the Office of Appeals for a further administrative hearing to identify the reasons for the assessments entered against petitioner for the taxable year 2005 and to determine if petitioner is current in filing tax returns and making estimated tax payments. Petitioner is expected to fully cooperate during the administrative hearing process and promptly gather his financial records if he intends to present to the Office of Appeals an alternative to the proposed levy action.

Upon due consideration, it is

ORDERED that respondent's Motion for Summary Judgment, filed March 22, 2017, is denied. It is further

ORDERED that, on the Court's own motion, this case is remanded to respondent's Office of Appeals for a further administrative hearing to allow the parties to identify the reasons for the assessments entered against petitioner for the taxable year 2005, to determine if petitioner is current in filing tax returns and making estimated tax payments, and if so, whether petitioner is eligible for an alternative to the proposed levy action. It is further

ORDERED that respondent shall offer petitioner an administrative hearing at respondent's Appeals Office located closest to petitioner's residence (or at such other place as may be mutually agreed upon) at a reasonable and mutually agreed upon date and time, but no later than August 11, 2017. It is further

ORDERED that each party shall, on or before August 31, 2017, file with the Court and serve on the other party, a report regarding the then present status of this case. It is further

ORDERED that jurisdiction is retained by the undersigned.

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

Dated: Washington, D.C.
June 22, 2017