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UNITED STATES TAX COURT
WASHINGTON, DC 20217

ROBERT FRED HELMS, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 11046-16 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER AND DECISION

This collection due process ("CDP") case is an appeal by petitioner Robert Fred Helms, Jr., pursuant to 26 U.S.C. section 6330(d), asking this Court to review the IRS's notice of determination sustaining a proposed levy to collect Mr. Helms's unpaid tax liabilities for tax years 2007 and 2008. The case is currently before the Court on a motion for summary judgment filed by respondent, the Commissioner of the Internal Revenue Service (IRS), on July 5, 2017, pursuant to Rule 121. The issue presented by respondent's motion is whether the IRS Office of Appeals ("Appeals") abused its discretion when it sustained the proposed determination. As explained below, we will grant respondent's motion.

Background

We base this order on facts supported by the evidence that respondent submitted in compliance with Rule 121, which facts Mr. Helms either admitted or did not dispute.

2007 and 2008 returns and liabilities

On April 1, 2010, Mr. Helms filed untimely tax returns (Form 1040, "U.S. Individual Tax Return") for 2007 and 2008. On his 2007 return he claimed an exemption for a dependent, but he failed to give a social security number for the dependent. The IRS disallowed the dependent exemption as a computational error

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pursuant to section 6213(b)(1) and (g)(2)(D) and (H), and assessed the tax accordingly on May 10, 2010. Mr. Helms's income tax withholding was insufficient to cover the adjusted liability and left an unpaid balance of $1,281 (on which interest and additions to tax accrued).

On his 2008 return, Mr. Helms likewise claimed an exemption for a dependent but failed to give a social security number for the dependent. The IRS again disallowed the dependent exemption as a computational error and assessed the tax accordingly on July 5, 2010. Mr. Helms's income tax withholding was sufficient to cover the assessed liability, and the excess was credited to his liability for another year (1999). However, the IRS later examined the 2008 return, determined that petitioner was subject to additional Alternative Minimum Tax in the amount of $1,404, and assessed the additional tax as a computational adjustment pursuant to I.R.C. § 6213(b) on February 20, 2012. Interest accrued on that balance.

Bankruptcy case

Mr. Helms evidently had unpaid tax liabilities for five years prior to those at issue here--i.e., 1999, 2000, 2002, 2003, and 2004. On October 8, 2010, the IRS filed a Notice of Federal Tax Lien as to those five years and 2007, reflecting a total amount due of $207,096. (That October 2010 lien notice is not the predicate for this CDP case.) On October 29, 2010, Mr. Helms filed a chapter 13 bankruptcy case in the United States Bankruptcy Court for the District of South Carolina.

The IRS filed a Proof of Claim in that bankruptcy case for the total amount of $236,998, for years including both 2007 and 2008. Respondent asserted an unsecured priority claim as to 2007 in the amount of $1,281 in tax due and $157 in interest (as accrued up to the bankruptcy petition date) and, as to 2008, in the amount of $500 in tax due with a notation "pending examination". (As noted above, the examination eventually resulted in a determination of $1,404 in Alternative Minimum Tax, but the February 2012 assessment thereof had not yet been made when the proof of claim was filed.)

Mr. Helms filed with the Bankruptcy Court a "Motion to Establish Value and Priority of Tax Claim", by which he sought to reduce the IRS's priority claim, but he later withdrew the motion. The IRS objected to Mr. Helms's proposed chapter 13 plan.

Ultimately, the bankruptcy case was dismissed on August 12, 2011, for failure to make plan payments. As a result of the bankruptcy filing, Mr. Helms's tax accounts for the tax years 2007 and 2008 had been frozen as of the bankruptcy petition date of October 29, 2010, and were not released from that status until after the dismissal on August 12, 2011.

The levy notice

The IRS sent to Mr. Helms a "Notice of Intent to Levy" dated August 19, 2015, concerning his unpaid income tax liabilities for the 2007 and 2008 taxable years. The notice stated the total liabilities as $4,520, which totaled: an "amount you owed" for 2007 of $1,873 (which evidently consists of the $1,281 of tax, plus "late filing penalty" of $320 under section 6651(a)(1), "failure to pay penalty" of $109, and interest of $163) and an "amount you owed" for 2008 of $1,564 (which evidently consists of the $1,404 of tax, plus interest of $160), plus additional specified amounts of penalties and interest that had accrued as of that date. The levy notice explained that Mr. Helms could request a CDP hearing with the IRS's Office of Appeals.

On August 27, 2015, Mr. Helms timely mailed to the IRS a Form 12153, "Request for a Collection Due Process or Equivalent Hearing". In the "reason" section of the Form 12153, Mr. Helms stated: "I received this notice only. I was not aware this tax was owed. I request a hearing to document tax owed - and compromise."

CDP hearing before IRS Appeals

On November 19, 2015, the IRS sent Mr. Helms a letter scheduling a CDP telephone hearing for December 30, 2015, requesting that Mr. Helms submit a Form 433-A, "Collection Information Statement," advising Mr. Helms to file delinquent returns for the taxable years 2011, 2012, 2013 and 2014, and requesting that Mr. Helms submit Form 656, "Offer-in-Compromise", for consideration.

After delays, Mr. Helms submitted the Form 433-A and (apparently) the delinquent returns. He did not submit an Offer-in-Compromise, but IRS Appeals, using Mr. Helms's financial information, prepared a proposed Installment Agreement ("IA") for Mr. Helms's consideration, which called for payment of $2,178 per month. Mr. Helms responded that the proposed monthly payment was too high, given his means, and he supplied documentation as to his expenses that

the IRS had not taken into account. On February 19, 2016, IRS Appeals then proposed an IA for a reduced payment of $818 per month and requested that Mr. Helms return it by March 3, 2016 (13 days later). Mr. Helms did not accept, decline, or respond to the IA proposed on February 19, 2016.

IRS Appeals verified that the requirements of any applicable law or administrative procedure had been met; confirmed the proper mailing of notice and demand to Mr. Helms's last known address; confirmed the proper issuance of the Notice of Intent to Levy; confirmed that assessments were properly made for each period listed on the Notice of Intent to Levy; confirmed that there existed a balance due when the Notice of Intent to Levy was issued; and concluded that the proposed levy was appropriate under the circumstances.

After waiting seven weeks and having heard no response to the IA it had proposed on February 19, 2016, IRS Appeals issued to Mr. Helms a "Notice of Determination" dated April 11, 2016, which set forth Appeals's determination to sustain the proposed levy action.

Tax Court proceedings

On May 9, 2016, Mr. Helms timely filed his petition in this Court. On July 5, 2017, the IRS filed a motion for summary judgment. On July 6, 2017, we ordered Mr. Helms to respond and gave explanation and instruction about the nature of a motion for summary judgment and how to respond to it. Our order stated in part–

> If Mr. Helms disagrees with the facts set out in the "Facts" section of the IRS's memorandum of facts and law in support of motion for summary judgment, then his response should point out the specific facts in dispute. His response should state, by number, any assertion with which he disagrees, should explain the reason for his disagreement, and should cite whatever evidence supports his position. If he disagrees with the IRS's argument as to the law (in the "Argument" section of the IRS's memorandum), then his response should also set out his position on the disputed legal issues.

Mr. Helms served on the IRS a response to their motion. He did not file it with the Court, but the IRS appended it to the reply it subsequently filed. After its preamble, Mr. Helms's response consists entirely of the following:

In 2016, The Petitioner entered into arbitration with a 3rd party represent[a]tive of the IRS [presumably, IRS Appeals], to determine a sum of taxes owed, and a payment schedule fitting for the income, and liabilities of the Petitioner.

An offer from the 3rd party arbitrator was rejected by the Petitioner due to the following points:

1) The 3rd party arbitrator had inadequate information regarding the case, and could not determine the tax sum amount owed, as well as a previous sum of payments made to the IRS over time to satisfy the tax liability. This important information was not available to the abitrator. The Petitioner felt the arbitrator was not prepared to settle the liability.

2) Despite inadequate preparation and tax liability sums not being available, the 3rd party arbitrator offered a contract payment plan to the Petitioner. The offered plan did not specify an ending date. An ending date is important for a future fixed income, when retired. An infinite payment plan is not acceptable.

3) The Petitioner provided all documentation required by the 3rd party to make an assessment.

The Petitioner is open to negotiation in order to determine a true and precise tax liability, as well as a offer in compromise to satisfy the IRS in this matter.

The Petitioner calls on the respondent to provide:

1) A true and precise tax liabil[i]ty owed to the IRS

2) Payments made to the IRS during the tax periods to satisfy the liability to date.

3) Provide accurate calculations as to how the liability sum is determined.

The Petitioner feels it is important for the Court to hear the facts in this case and determine a path forward.

Discussion

I. Summary judgment standard

Where the pertinent facts are not in dispute, a party may move for summary judgment to expedite the litigation and avoid an unnecessary trial. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted where there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(a) and (b); see Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994); Zaentz v. Commissioner, 90 T.C. 753, 754 (1988).

The party moving for summary judgment (here, the IRS) bears the burden of showing that there is no genuine dispute as to any material fact, and factual inferences will be drawn in the manner most favorable to the party opposing summary judgment (here, Mr. Helms). Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982).

II. Collection Due Process procedures

If a taxpayer fails to pay any Federal income tax liability after demand, section 6331(a) authorizes the IRS to collect the tax by levy on the taxpayer's property. However, the IRS must first issue a final notice of intent to levy, and notify the taxpayer of the right to an administrative hearing before IRS Appeals. Secs. 6320(a), 6330(a) and (b)(1). After receiving such a notice, the taxpayer may request an administrative hearing before IRS Appeals. Sec. 6330(a)(3)(B), (b)(1).

At the CDP hearing, IRS Appeals must make a determination whether the proposed collection action may proceed. In so doing, the appeals officer is required to do several things:

First, IRS Appeals must verify that the requirements of any applicable law and administrative procedure have been met by IRS personnel. See sec. 6330(c)(3)(A). Mr. Helms alleges no failure to obtain verification.

Second, pursuant to section 6330(c)(2)(B), IRS Appeals must consider a taxpayer's challenge to his underlying tax liability, but only if he "did not receive

any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability." Mr. Helms had such an opportunity in his bankruptcy case. See Everett Assoc., Inc. v. Commissioner, T.C. Memo. 2012-143 ("Where a taxpayer has filed a bankruptcy action and the Commissioner has submitted a proof of claim for unpaid Federal tax liabilities in that action, we have held that the taxpayer has had the opportunity to dispute the liabilities for purposes of section 6330(c)(2)(B)"; citations omitted). Mr. Helms is therefore not entitled to challenge his liability in this case.

Third, the appeals officer must consider any collection alternatives proposed by the taxpayer. See sec. 6330(c)(3)(B), citing sec. 6330(c)(2)). The installment agreement that Appeals attempted to negotiate with Mr. Helms is such a collection alternative.

Fourth, IRS Appeals must consider "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary", sec. 6330(c)(3)(C), and Mr. Helms does not allege any defect or failure in this regard.

When Appeals issues its determination, the taxpayer may "appeal such determination to the Tax Court", pursuant to section 6330(d)(1), as Mr. Helms has done. If the validity of the underlying liability is properly at issue, we will review that determination de novo, Sego v. Commissioner, 114 T.C. 604, 610 (2000); but as we stated above, the underlying liability is not properly in dispute here. For other issues, we review the determination for abuse of discretion. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). That is, we decide whether the determination was arbitrary, capricious, or without sound basis in fact or law. See Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Sego v. Commissioner, 114 T.C. at 610; Goza v. Commissioner, 114 T.C. at 181-182.

III. Discussion

Mr. Helms's reply quoted above makes contentions that we now address.

Mr. Helms complains that Appeals "could not determine the tax sum amount owed, as well as a previous sum of payments made to the IRS over time to satisfy the tax liability." We do not know what Mr. Helms expected of Appeals in this connection--unless he means to dispute the amount of the liability, which he cannot

do. The amounts of the liabilities were stated in the notice of levy that he had already received, as we explained above. The IRS's transcripts, rendered in our record on Forms 4340, show the credits applied against his 2007 and 2008 liabilities, and he has alleged no error in them. It may be that the extreme disarray of his tax situation--with a string of years in bankruptcy--made the situation confusing for him, but that is no fault of Appeals, and we see no error or abuse of discretion as to 2007 or 2008, the years before Appeals.

Mr. Helms complains about the performance of the Appeals officer, stating that "important information was not available to the abitrator. The Petitioner felt the arbitrator was not prepared to settle the liability." But Mr. Helms set out no justification for this allegation. It was his responsibility to give Appeals any necessary information about his financial situation. Appeals proposed an IA, considered Mr. Helms's response to it, reduced the payment amount accordingly, and proposed a revision. Mr. Helms did not respond by the due date 13 days later that Appeals had stated--nor for an additional five weeks. The process stalled there because of Mr. Helms's inaction. In the hearing before Appeals, it was incumbent on Mr. Helms to respond to what the Appeals officer had proposed; and before this Court it was incumbent on him to show an error or abuse of discretion by Appeals. He did not do so. After waiting so patiently and receiving no response, Appeals did not abuse its discretion by issuing its determination.

Mr. Helms complains that "[t]he offered plan [i.e., the IA proposed by Appeals] did not specify an ending date. An ending date is important for a future fixed income, when retired. An infinite payment plan is not acceptable." Neither party produced to us the proposed IA that Mr. Helms says called for infinite monthly payments. However, Mr. Helms does not deny that the proposed IA was on Form 433-D, and we take judicial notice that that form does have, as one of its standard provisions, a statement of its term: "This agreement will remain in effect until your liabilities (including penalties and interest) are paid in full, the statutory period for collection has expired, or the agreement is terminated." Because interest and penalties do continue to accrue during the term of the IA, it may not be practical to attempt to specify at the outset a precise date and amount for the last payment; but it seems unlikely in the extreme that the proposed IA that Appeals sent to Mr. Helms called for unending payments. However, we assume in Mr. Helms's favor that, because (as he alleges) the proposed IA "did not specify an ending date", Mr. Helms as a result sincerely believed that the proposed IA would have obliged him to make perpetual payments and that it was therefore unsatisfactory. However, this did not entitle Mr. Helms to halt his cooperation with Appeals, sit on his hands, and be immune from collection of his 2007 and

2008 liabilities. He should have explained to Appeals the problem with the proposed IA or a correction to it. Since he did not do so, Appeals did not abuse its discretion by issuing its determination. See Bullock v. Commissioner, T.C. Memo. 2017-161, at *10-*11.

In view of the foregoing, it is

ORDERED that respondent's motion for summary judgment is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the collection of petitioner's Federal income tax for 2007 and 2008 as described in the "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330" dated April 11, 2016.

(Signed) David Gustafson
Judge

ENTERED: **AUG 25 2017**