UNITED STATES TAX COURT
WASHINGTON, DC 20217

DAVID EDWARD LEWIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 20410-16 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER AND DECISION

This collection due process ("CDP") case is an appeal by petitioner David Edward Lewis 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. Lewis's unpaid tax liabilities for 2012. 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 August 3, 2017, pursuant to Rule 121. The issue presented by respondent's motion is whether the IRS Office of Appeals ("Appeals") abused its discretion when declined to enter into an Installment Agreement ("IA") and sustained the proposed determination. As explained below, we will grant respondent's motion.

Background

The IRS's motion for summary judgment shows the following facts, which Mr. Lewis does not dispute:

Proposed levy

For the year 2012, Mr. Lewis did not file a Federal income tax return. The IRS prepared a substitute for return, evidently based on third-party reporting, and Mr. Lewis's withholding was not sufficient to cover the tax liability. On February

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4, 2016, the IRS issued a "Notice of intent to levy", showing that the unpaid liability with penalties and interest exceeded $80,000.

CDP request

On February 22, 2016, Mr. Lewis timely submitted a Form 12153, "Request for a Collection Due Process ... Hearing". He checked boxes indicating "I cannot pay balance" and showing interest in an IA. On the form he wrote, "Have lost 50% client income and unable to pay--plan mortgage refinance."

CDP hearing and determination

By letter of May 25, 2016, the IRS's Office of Appeals scheduled a telephone conference with Mr. Lewis for June 22, 2016. The letter explained that, in order for Appeals to consider entering into an IA with Mr. Lewis, he would need to submit financial information by means of a completed Form 433-A, "Collection Information Statement ...", and would need to submit income tax returns for the taxable years 2011, 2014, and 2015, which he had not filed.

Mr. Lewis did not submit the requested information and did not telephone Appeals at the appointed time. Appeals therefore sent him a letter dated June 22, 2016, noting that he had not telephoned for the meeting nor submitted the requested information, and stating:

> Please be advised that we will make a determination in the Collection Due Process hearing you requested by reviewing the Collection administrative file and whatever information you have already provided.
>
> If you would like to provide information for our consideration, please do so within 14 days (July 6, 2016) from the date on this letter.

Mr. Lewis did not respond. Thus, though he expressed interest in an IA, he did not make any specific proposal for an IA nor submit information that would have enabled Appeals to consider an IA. Before Appeals Mr. Lewis did not make any challenge to the underlying liability reflected in the notice of proposed levy.

On August 16, 2016 (more than a month after the July 6 deadline), Appeals issued to Mr. Lewis a notice of determination concluding that the proposed levy against him should be sustained.

Tax Court proceedings

On September 14, 2016, Mr. Lewis timely appealed from that determination by mailing a petition to this Court. His petition stated:

> I have requested a simple payment plan on a monthly basis over time that will cover my debt (principal, interest, fines, etc). In the past I have been able to secure such an agreement with State of Maryland and I paid every month and settled my debt. IRS will not allow this and requests a series of forms and information which I do not have and cannot provide. IRS wants me to provide Form 433A which I believe is invasive and self-defeating as it does not provide for[] my goodwill in having a monthly payment plan to settle this liability. I am ready to start a monthly payment plan as soon as IRS can offer me such. I would appreciate an opportunity for settlement with such a payment plan and allow me adequate relief to pay my liability.
>
> ... I merely am requesting the option and opportunity of a direct repayment plan that I can commence immediately in lieu of this cumbersome and invasive process.

On August 3, 2017, the IRS filed a motion for summary judgment, setting out the preceding facts, showing that Appeals had obtained verification of compliance with law and procedure (pursuant to section 6330(c)(1)), showing that Mr. Lewis did not challenge the liabilities at issue (pursuant to section 6330(c)(1)(B)), and arguing that Appeals' determination to sustain the proposed levy involved no abuse of discretion because Mr. Lewis declined to provide financial information. On September 5, 2017, Mr. Lewis filed a response that stated:

> 1. I do not dispute the facts as set out in paragraphs 1-23 of the IRS's motion for summary judgment.
>
> 2. I do challenge the case as for years all I have requested from the IRS is to establish a payment plan with me to pay the tax debt in question. The IRS has never offered me such opportunity and has instead filed this tax case against me.

3. I remain willing and able to agree to a payment plan for this tax debt and request that such consideration be offered to me in lieu of a trial case.

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). Mr. Lewis does not dispute the asserted facts.

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

First, 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. Lewis alleges no failure to obtain verification.

Second, pursuant to section 6330(c)(2)(B), in some circumstances Appeals must consider a taxpayer's challenge to his underlying tax liability, but Mr. Lewis made no such challenge.

Third, Appeals must consider any collection alternatives proposed by the taxpayer. See sec. 6330(c)(3)(B), citing sec. 6330(c)(2)). The IA in which Mr. Lewis expressed an interest would be such a collection alternative.

Fourth, 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. Lewis does not allege any defect or failure in this regard.

When Appeals issues its determination, the taxpayer may "petition the Tax Court for review of such determination", pursuant to section 6330(d)(1), as Mr. Lewis has done. If the validity of the underlying liability were properly at issue, we would review that determination de novo, Sego v. Commissioner, 114 T.C. 604, 610 (2000); but as we stated above, the underlying liability is not 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. Lewis's petition and response quoted above contend that Appeals should have granted him an IA without requiring him to provide financial information, which he considered "cumbersome and invasive". However, we have often held that it is not an abuse of discretion for Appeals to reject a collection alternative because the taxpayer failed to submit requested financial information. Tucker v. Commissioner, T.C. Memo. 2014-103; Huntress v. Commissioner, T.C. Memo. 2009-161. The IRS is charged with the duty to collect taxes; and when a taxpayer fails to pay his taxes after notice and demand, the IRS is authorized to collect them by levy. The CDP process creates an opportunity for a taxpayer to request the agency's forbearance, and IRS procedures are reasonably constructed to assure that such forbearance is granted only where it is justified. Mr. Lewis's refusal to give financial information about himself made it impossible for the IRS to determine whether (as he alleged on Form 12153) he "cannot pay balance". He effectively demanded that the IRS simply accept that allegation on his say-so, but the IRS is not required to do so. Appeals did not abuse its discretion in denying a collection alternative in the absence of such financial information.

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 2012 as described in the "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code" dated August 16, 2016.

(Signed) David Gustafson
Judge

ENTERED: **SEP 15 2017**