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

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DANTE LEROY TAYLOR,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 19243-16 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER AND DECISION

In this collection due process ("CDP") case, brought pursuant to 26 U.S.C. section 6330(d), petitioner Dante Leroy Taylor asks this Court to review the IRS's notice of determination sustaining a proposed levy to collect Mr. Taylor's unpaid income tax liability for 2014. 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 16, 2017, pursuant to Rule 121. Despite our order of that date directing him to respond, Mr. Taylor did not file a response to the Commissioner's motion. We will grant the Commissioner's motion.

Background

The Commissioner's motion for summary judgment and the evidence submitted with it show the following facts, which Mr. Taylor has not disputed:

Proposed levy

An IRS transcript attached to the Commissioner's motion shows that for the year 2014 Mr. Taylor filed a return reporting an income tax liability of almost $120,000. The transcript shows payments (i.e., withholding) of less than $8,000, leaving an unpaid balance of more than $112,000. The IRS assessed the tax that Mr. Taylor had reported and, when he did not pay the unpaid balance after notice

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and demand, issued to Mr. Taylor on October 9, 2015, a "Notice of intent to levy", showing that the unpaid liability with penalties and interest exceeded $118,000.

CDP request

On November 6, 2015, Mr. Taylor timely mailed to the IRS a Form 12153, "Request for a Collection Due Process ... Hearing". He checked a box indicating interest in an "Offer in Compromise" ("OIC"). On the form he wrote, "Recently received notice to refile taxes"; and "Finally received notice to refile taxes".

CDP hearing

By letter of May 13, 2016, IRS Appeals scheduled a telephone conference for June 29, 2016, and advised Mr. Taylor (a) that if he wanted to make corrections of his 2014 liability, he should submit an amended 2014 return, and (b) that if he wanted IRS Appeals to consider a collection alternative such as an OIC or an Installment Agreement ("IA"), then he should submit his tax return for 2015 (then overdue); a Form 656 ("Offer in Compromise") and a Form 433-A (OIC) ("Collection Information Statement for Wage Earners and Self-Employed Individuals") with supporting documents, if he wanted an OIC; or a Form 433-A ("Collection Information Statement") with supporting documents, if he wanted an IA. The May 13 letter told Mr. Taylor that he should submit these items by June 22, 2016 (a week in advance of the scheduled June 29 phone conference).

Mr. Taylor did not make submissions by June 22 or call in for the phone conference on June 29, 2016.

On June 29, 2016, IRS Appeals sent Mr. Taylor another letter, pointing out that he had not submitted the information nor called in for the phone conference. The letter stated, "If you would like to provide information for our consideration, please do so within 14 days from the date on this letter"--i.e., by July 13, 2016.

On August 4, 2016, IRS Appeals issued its Notice of Determination, sustaining the levy action. The Notice of Determination stated: "Issuance of the Final Notice of Intent to Levy by the Service was appropriate and is sustained. All procedures were met in sending the notice. You were unresponsive to Appeals' contacts to hold the Collection Due Process hearing and to discuss or resolve your issues. No viable collection alternative was reached in Appeals."

Tax Court petition

On August 31, 2016, Mr. Taylor timely filed his petition with this Court, requesting review of that determination. His petition stated:

> My original taxes were not computed correctly initially by the IRS computer. The computer did not complete steps 64 through 79. The associated documents: Schedule A, schedule C, 6251 and 1099-A were misplaced after I submitted my tax returns. I have attached an amended 1040 with corrections from IRS transcripts, and all associated documents mentioned above. I am also attaching a copy of the IRS transcripts....
>
> I have reviewed the IRS transcripts which did not complete the full calculations for my tax return. I was informed that not all documents I forwarded to the IRS were received.

Thus, the petition indicated an intention to challenge his assessed liability but did not indicate any challenge to Appeals' denial of an OIC.

Attached to the petition are an IRS "Tax Return Transcript" for Mr. Taylor's 2014 year dated "06-09-2015" and a Form 1040 for 2014 purportedly dated "4-21-16"" (apparently an amended return, though not submitted on Form 1040X).

What the attachments seem to show

The petition does not allege that Mr. Taylor ever gave to IRS Appeals the IRS transcript and amended return that are attached to his petition here, so they are not material to our analysis, for the reasons stated below. But we note as follows:

The amended return shows that in 2014 Mr. Taylor received $20,743 in wages, $17,227 from pensions or annuities, and $10,750 in unemployment compensation--consistent with his identifying his "occupation" as "Job seeker."

However, the amended return also shows a surprising $358,031 of "other income" on line 21; and it shows a total tax due of more than $120,000. The IRS's 06-09-2015 transcript duly reflects those amounts, meaning evidently that the IRS accepted his self-reporting that he had this large amount of "other income". Of course, we do not fault the agency for accepting a taxpayer's self-reporting of income.

However, the "other income" amount that Mr. Taylor reported evidently corresponded to line 4 ("Fair market value of property") of a Form 1099-A ("Acquisition or Abandonment of Secured Property") that Mr. Taylor attached to the amended return. The Form 1099-A is filled out by hand, apparently in Mr. Taylor's own handwriting. The Form 1099-A identifies Mr. Taylor as the lender, identifies "USAA Federal Savings Bank" as the borrower, states in box 6 that the property is "Fixed Rate Note", states in box 2 that the "Balance of principal outstanding" is $190,402.78, and states in box 1 that the "Date of lender's acquisition or knowledge of abandonment" was "7/18/2011" (emphasis added).

The amended return reports on line 64 ("Federal income tax withheld from Forms W-2 and 1099") an amount of $197,887 and claims an overpayment of $77,117, for which Mr. Taylor requested a refund. The IRS has not made that refund.

We perceive that the reported withholding of $197,887 consists of the $7,484 that the IRS transcript accepted in his favor, plus the amount in box 2 ($190,403) on the Form 1099-A. The IRS transcript does not reflect that the box 2 amount is treated as withholding in his favor.

Thus, Mr. Taylor reported as income the supposed fair market value of a note by which he made a loan to USAA Federal Savings Bank ($358,031) and reported as income tax withholding the supposed outstanding balance of that loan ($190,403). We do not understand this reporting, and it seems highly likely that Mr. Taylor's self-reported income and his self-reported tax liability are in error in some fashion. It is possible--but we cannot tell--that his use of the Form 1099-A reported fictitious amounts in an attempt to obtain a refund to which he was not entitled, though such an effort would normally, we suppose, be undertaken using a version of Form 1099 that has a box for reporting withholding. Form 1099-A does not, so if that was Mr. Taylor's intention (which we do not know), it failed to get him a refund (to which he was not entitled) and instead left him with an assessed tax liability of $120,000 on bogus income (which he might not actually owe).

Had Mr. Taylor cooperated with IRS Appeals in the CDP process, these apparent errors might have been worked out in that context. But as we state above, Mr. Taylor did not communicate with Appeals.

Tax Court proceedings

On August 16, 2017, the Commissioner filed a motion for summary judgment, showing that Appeals had obtained verification of compliance with law and procedure (pursuant to section 6330(c)(1)), showing that Mr. Taylor did not submit any information during the agency-level CDP hearing, and arguing that Appeals' determination to sustain the proposed levy involved no abuse of discretion.

By our order dated August 8, 2017, we ordered Mr. Taylor to file a response to the Commissioner's motion for summary judgment no later than September 15, 2017. Our order explained the nature of such a motion and the manner in which Mr. Taylor should respond to it. Our order also stated, "Mr. Taylor should note that Tax Court Rule 121(d) provides, "If the adverse party [i.e., Mr. Taylor] does not so respond [to a motion for summary judgment], then a decision, if appropriate, may be entered against such party". As of this date, Mr. Taylor has not filed a response.

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. Taylor has not disputed 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, IRS Appeals must make a determination whether the proposed collection action may proceed. In so doing, Appeals 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. Taylor has alleged 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 Mr. Taylor did not challenge his liability during the agency-level hearing, so Appeals had no challenge to consider.

Third, IRS Appeals must consider any collection alternatives proposed by the taxpayer. See sec. 6330(c)(3)(B) (citing sec. 6330(c)(2)). The OIC as to which Mr. Taylor's Form 12153 expressed interest 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. Taylor has not alleged any defect or failure in this regard.

When IRS Appeals issues its determination, the taxpayer may "petition the Tax Court for review of such determination", pursuant to section 6330(d)(1), as Mr. Taylor did. Where the validity of the underlying liability is properly at issue, we review that determination de novo. Sego v. Commissioner, 114 T.C. 604, 610 (2000). 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. Taylor's petition suggested that he intended to litigate in the Tax Court a liability challenge that he did not make before IRS Appeals during the agency-level CDP hearing. He may not do so. See Magana v. Commissioner, 118 T.C. 488, 493-494 (2002).

Mr. Taylor's petition filed here does not seem to challenge Appeals' denial of the OIC in which he expressed an interest, and we could therefore treat that potential contention as conceded. See Rule 331(b)(4). However, even if we were to address the merits of that contention, we cannot find any abuse of discretion in Appeals handling of the OIC. Mr. Taylor failed to provide financial information and failed to file his delinquent return.

We have often held that it is not an abuse of discretion for Appeals to reject a collection alternative where 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. Appeals did not abuse its discretion in denying a collection alternative in the absence of such financial information.

We have often held that it is not an abuse of discretion for Appeals to reject a collection alternative where the taxpayer failed to file delinquent returns. See, e.g. Huntress v. Commissioner, T.C. Memo. 2009-161, slip op. at 11-13 (citing Giamelli v. Commissioner, 129 T.C. 107, 111-112 (2007)). The regulation implementing the CDP process provides that, "the IRS does not consider offers to compromise from taxpayers who have not filed required returns or have not made certain required deposits of tax[.]" 26 C.F.R. secs. 301.6320-1(d)(2), para. Q&A-D8, 301.6330-1(d)(2), para. Q&A-D8, Proced. & Admin. Regs. Therefore, Appeals did not abuse its discretion when it considered Mr. Taylor ineligible for an OIC when he was not in compliance with his filing obligations.

In view of the foregoing, it is

ORDERED that respondent's motion for summary judgment is granted, both on its merits and, in the alternative, on the ground that Mr. Taylor failed to comply with the Court's order that he respond to the motion (see Rule 121(d); see also Rule 123(b)). It is further

ORDERED AND DECIDED that respondent may proceed with the collection of petitioner's Federal income tax for 2014 as described in the "Notice

of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code" dated August 4, 2016.

(Signed) David Gustafson
Judge

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