

not fully pay the liabilities. On October 24, 2015, the IRS issued a “Notice of intent to levy”, showing that the unpaid liability with penalties and interest slightly exceeded \$10,000.

CDP request

On November 23, 2015, Mr. Parikh timely submitted a Form 12153, “Request for a Collection Due Process ... Hearing”. He checked a box indicating interest in an “Installment Agreement” (“IA”). On the form he wrote, “IRS failed to properly calculate the amount of tax.... IRS claimed dependent SSN was incorrect – Correct copy was provided (attached).” On an attachment to the form, he wrote: “I request that the tax amount be correctly calculated and an installment plan for the balance be established.”

CDP hearing

By letter of May 18, 2016, IRS Appeals scheduled a telephone conference for June 30, 2016, and advised Mr. Parikh that a collection alternative could not be considered unless he provided a Form 433-A (“Collection Information Statement”) with supporting documents, and Forms 1040 (“U.S. Individual Income Tax Return”) for the years 2012, 2013, 2014, and 2015 tax years, which Mr. Parikh had not previously filed. The return for 2015 (due in April 2016) was then a month late; and the return for the earliest year, 2012 (due in April 2013), was then more than 4 years late. Appeals’ letter also requested proof of estimated tax payments for tax year 2016 (then in progress).

On June 30, 2016, Mr. Parikh spoke with Appeals by phone. Appeals informed him that the correct Social Security number for his dependent had been located, so that the IRS would allow the dependent exemption deductions and adjust his balances due--by \$547 in 2009, \$547 in 2010, and \$555 in 2011. Appeals asked about Mr. Parikh’s Form 433-A and delinquent returns, and Mr. Parikh stated that they had been mailed two weeks earlier. To allow time for receipt of those documents, Appeals rescheduled the phone conference for August 4, 2016.

On August 4, 2016, Mr. Parikh did not phone Appeals. Appeals did not receive Mr. Parikh’s Form 433-A or his delinquent returns.

On August 10, 2016--more than 10 weeks after the initial letter of May 18, 2016--IRS Appeals issued the Notice of Determination sustaining the levy action. The Notice of Determination stated:

The issuance of the Notice of Intent to Levy was proper.

We have requested adjustments [i.e., for the dependent exemption deductions] to the above listed tax accounts to reflect your original filing information. Apparently there will still be a balance owed. We could not establish a payment arrangement [i.e., an IA] since you are not in current filing compliance.

The intention to enforce collection by the compliance division is sustained.

Tax Court proceedings

On September 9, 2016, Mr. Parikh timely filed his petition with this Court, requesting review of that determination.

On August 17, 2017, the Commissioner 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 Appeals had addressed Mr. Parikh's challenges to the liabilities at issue during the agency-level CDP hearing, and arguing that Appeals' determination to sustain the proposed levy involved no abuse of discretion because Mr. Parikh failed to file his delinquent returns and his Form 433-A.

By order of August 18, 2017, we ordered Mr. Parikh to file a response to the Commissioner's motion for summary judgment no later than September 18, 2017. Our order explained the nature of such a motion and the manner in which Mr. Parikh should respond to it. Our order also stated, "Mr. Parikh should note that Tax Court Rule 121(d) provides, "If the adverse party [i.e., Mr. Parikh] 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. Parikh 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. Parikh 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. Parikh 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. Mr. Parikh challenged his assessed liability during the agency-level hearing by raising the issue of the disallowed dependent exemption deductions, and Appeals made the adjustments he requested. Appeals therefore had no other challenge to consider. Mr. Parikh has not made any suggestion of any other liability issue in response to the motion for summary judgment.

Third, IRS Appeals must consider any collection alternatives proposed by the taxpayer. See sec. 6330(c)(3)(B) (citing sec. 6330(c)(2)). The installment

agreement as to which Mr. Parikh'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. Parikh 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. Parikh has done. 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. Analysis

Mr. Parikh's petition suggests that in the Tax Court he would litigate liability challenges; however, the only such challenge that he made before IRS Appeals during the agency-level CDP hearing was resolved in his favor. He may not now attempt to litigate here any issues that he did not ventilate with IRS Appeals at the agency-level hearing. See Magana v. Commissioner, 118 T.C. 488, 493-494 (2002).

Mr. Parikh's petition filed here challenges Appeals' denial of the collection alternative that he proposed, but we cannot find any abuse of discretion in Appeals handling of collection alternatives, because Mr. Parikh failed to provide financial information and failed to file his delinquent returns.

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. Mr. Parikh's failure to give financial information about himself made it impossible for the IRS to determine whether he was eligible for an IA. 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. Parikh ineligible for an IA on the grounds that he was not in compliance with current filing obligations.

In view of the foregoing, it is

ORDERED that respondent's motion for summary judgment, as supplemented, is granted, both on its merits and, in the alternative, on the ground that Mr. Parikh 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 2009, 2010, and 2011 as described in the "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code" dated August 10, 2016.

**(Signed) David Gustafson
Judge**

ENTERED: **OCT 10 2017**