

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

TALIB I. KARIM,)
)
 Petitioner,)
)
 v.) Docket No. 17407-15 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER AND DECISION

This is a “collection due process” (“CDP”) case, brought pursuant to 26 U.S.C. section 6330(d). Petitioner Talib I. Karim seeks our review of a determination by the IRS’s Office of Appeals that sustains the filing of a notice of federal tax lien to collect his unpaid Federal income tax for 2009, 2010, and 2012. The Commissioner filed a motion for summary judgment on August 22, 2017, and despite our order of August 25, 2017, directing Mr. Karim to file a response, he has not done so. We will grant the Commissioner’s motion.

Background

The Commissioner has shown the following facts, which Mr. Karim has not disputed.

For the three years at issue, Mr. Karim filed Federal income tax returns reporting income tax liabilities. The IRS assessed the tax reported. Mr. Karim did not fully pay those liabilities.

Respondent issued to Mr. Karim a Letter 3172, “Notice of Federal Tax Lien Filing and your Right to a Hearing under I.R.C. § 6320” (NFTL”) dated “11/20/2014”, for his 2009, 2010, and 2012 income tax liabilities. On December 30, 2014, respondent received a Form 12153, “Request for a Collection Due Process or Equivalent Hearing” from Mr. Karim, apparently timely mailed. (The

Letter 3172 is dated “11/20/2014”, but it calls for a hearing request “by 12/29/2014”, so we assume it was not mailed on that date. Mr. Karim’s request is dated “12/27/14”, and because it arrived by 12/30/2014, we conclude it was mailed no later than 12/29/2014.)

Mr. Karim’s CDP request indicated by a checked box on Line 8 that the reason for his request was: “I Cannot Pay Balance”. He also stated, “I don't know if all the taxes paid have been credited. In either way, I cannot afford the tax liability proposed and wish to negotiate a settlement.”

IRS Appeals conducted the requested CDP hearing. Mr. Karim submitted financial information about himself, and Appeals determined that his account should be designated “currently not collectible”--a determination with which he agreed. However, Mr. Karim did not provide during the CDP hearing any evidence showing that the IRS had misapplied any payments he had made, and he did not dispute his underlying liability for the income taxes at issue. The record shows that the Appeals officer explained the lien to Mr. Karim, but it does not show that he requested it be withdrawn. The Appeals officer’s notes reflect that Mr. Karim “did not agree with the lien filing but understood why it was necessary”. On June 3, 2015, IRS Appeals issued its “Notice of Determination Concerning Collection Action under Section 6320 and/or 6330”, which stated:

The determination of Appeals is: Compliance has followed all applicable laws and administrative procedures. There was no information in the case file that warrants the withdrawal of the filed Notice of Federal Tax Lien (NFTL). The filed NFTL is the appropriate action in this case. It will remain in effect and in full force until the tax liabilities are satisfied or become unenforceable by law. However, it has also determined, based on verified financial information, your tax accounts are currently not collectible.

Mr. Karim timely mailed his petition to this Court on July 3, 2017. The petition states:

While I agree with the determination of the IRS hearing examiner that the IRS accounts were currently uncollectable I disagree with the finding that the notice of federal tax lien should not be withdrawn. Both the facts of the case and public policy supports the withdrawal of the notice of federal tax lien as well....

The tax lien was imposed upon me without the opportunity for the IRS to understand the significant financial hardship that I was facing which prevented me from paying my tax liability. Furthermore, the IRS has not demonstrated that the tax liability that is being alleged is actually correct. It is my belief that I have made payments to the service that are not reflected in the lien. Moreover, the lien prevents me from securing additional employment or [pursuing] business opportunities that can provide the income needed to repay the tax liability. I am fully committed to repaying my taxes and ask that the lien be withdrawn to assist me in generating the income needed to allow me to repay the appropriate liability.

Thus, the petition asserts (1) that the lien should be withdrawn because of difficulty that it causes Mr. Karim, (2) that the IRS has not demonstrated that the amount of tax assessed is correct, and (3) that he has made payments to the IRS that are not reflected on his account.

The Commissioner moved for summary judgment. Our order of August 25, 2017, directed Mr. Karim to respond. Our order explained the nature of a motion for summary judgment and the manner of responding to it; and we stated: “Mr. Karim should note that Tax Court Rule 121(d) provides, ‘If the adverse party [i.e., Mr. Karim] does not so respond [to a motion for summary judgment], then a decision, if appropriate, may be entered against such party.’” Mr. Karim has filed no response.

Discussion

I. CDP Principles

When a taxpayer fails to pay any Federal income tax liability after demand, section 6321 imposes a lien in favor of the United States on all the property of the delinquent taxpayer, and section 6323 authorizes the IRS to file notice of that lien. The IRS must provide written notice of a tax lien filing to the taxpayer within five business days. After receiving such a notice, the taxpayer may request an administrative hearing before IRS Appeals. Sec. 6320(a)(3)(B), (b)(1). Administrative review is carried out by way of a hearing before IRS Appeals pursuant to section 6330(b) and (c).

For the agency-level CDP hearing before IRS Appeals, the pertinent procedures are set forth in section 6330(c). Those procedures require IRS Appeals to consider four sets of issues:

First, the appeals officer must obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(c)(1). Mr. Karim's only contention implicating verification is his "belief that I have made payments to the service that are not reflected". We discuss verification below in part II.

Second, a taxpayer may contest the existence and amount of the underlying tax liability if he did not have a prior opportunity to dispute the tax liability. Sec. 6330(c)(2)(B). The Commissioner does not contend that Mr. Karim had a prior opportunity, so we conclude that he was entitled to challenge his underlying liability in the CDP hearing. We discuss underlying liability below in part III.

Third, the taxpayer may "raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy," including challenges to the appropriateness of the collection action and offers of collection alternatives. Sec. 6330(c)(2)(A). Appeals determined that, as a "collection alternative", Mr. Karim should be put in "currently not collectible" (CNC) status, with which Mr. Karim agrees, and we need not further address this issue.

Fourth, at the CDP hearing Appeals is to consider "whether any proposed collection action [here, the filing of the NFTL] 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). Mr. Karim's complaints about the lien can be addressed under this concept.

When IRS Appeals issues its determination, if the taxpayer is dissatisfied with the outcome there, he can file a petition with the Tax Court under section 6330(d) for review of Appeals' determination, as Mr. Karim did.

II. Verification

IRS Appeals has the affirmative duty, without any prompting by the taxpayer, to verify the procedural predicate for the liabilities. See Hoyle v. Commissioner, 131 T.C. No. 13 (2008). As to the income tax liabilities, the notice of determination sets forth Appeals' compliance with the "verification" requirements as to the liabilities at issue. Mr. Karim's only contention in the nature of an allegation of a failure of "verification" as to the income tax liabilities is his "belief that I have made payments to the service that are not reflected". However, neither at the agency-level hearing nor in this Tax Court proceeding did

Mr. Karim give any evidence of any payment that the IRS failed to credit to his account. The Commissioner is therefore entitled to summary judgment on this issue.

III. Underlying liability

Mr. Karim's complaint that "the IRS has not demonstrated that the tax liability that is being alleged is actually correct" misses the mark. It is he who bears the burden to show that the assessed liability is not correct. In this instance, the liability is derived from his own reporting, so his burden was to show his own error and the correction of it. He did not make any attempt to do so, either at the agency-level hearing nor here in the Tax Court. The Commissioner is therefore entitled to summary judgment on this issue.

IV. Balancing and intrusiveness

As we noted above, section 6330(c)(3)(C) requires a consideration of "whether [the filing of the NFTL] 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." The filing of a notice of lien is usually less intrusive than a levy. While a levy is an affirmative action taken to collect the tax, a notice of lien is a more passive action by the Government that in effect simply saves its place in line ahead of other potential claims against the taxpayer's property.

A lien might nonetheless be "intrusive" where (as Mr. Karim alleges) "the lien prevents me from securing additional employment or [pursuing] business opportunities that can provide the income needed to repay the tax liability" and where withdrawal of the lien would "assist me in generating the income needed to allow me to repay the appropriate liability". Such circumstances might implicate section 6323(j), which gives the IRS discretion to withdraw the notice of lien where "(C) the withdrawal of such notice will facilitate the collection of the tax liability, or (D) ... the withdrawal of such notice would be in the best interests of the taxpayer ... and the United States."

However, the Commissioner demonstrated that at the CDP hearing Mr. Karim failed to establish that any of the grounds listed in section 6323(j) apply to his case; and in response to the IRS's motion in this Court, Mr. Karim failed to make any response whatsoever. We therefore have no basis for criticizing IRS

Appeals' determination not to withdraw the lien, and the Commissioner is entitled to summary judgment on this issue as well.

It is therefore

ORDERED that respondent's motion for summary judgment is granted, both on its merits and, in the alternative, on the ground that Mr. Karim 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 2012 as described in the "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code" dated June 3, 2015.

(Signed) David Gustafson
Judge

ENTERED: **OCT 10 2017**