

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

MINORITY HEALTH COALITION OF)
MARION CO., INC.,)
)
Petitioner,)
)
v.) Docket No. 27175-14 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

This collection case is scheduled for trial during the Court’s trial session beginning October 30, 2017, in Indianapolis, Indiana. Minority Health Coalition of Marion Co., Inc. (Minority Health) seeks review under section 6330(d)(1) of the Commissioner’s determination to sustain a notice of federal tax lien.¹ The lien relates to employment tax liabilities, interest, and penalties for the taxable periods ending December 31, 2010, December 31, 2011, December 31, 2012, March 31, 2013, June 30, 2013, and September 30, 2013.

On August 31, 2017, the Commissioner filed a motion for partial summary judgment under Rule 121, arguing that Minority Health is precluded from contesting its employment tax liability for some of the taxable periods at issue, those ending December 31, 2010, December 31, 2011, December 31, 2012, March 31, 2013, and September 30, 2013, because it had a prior opportunity to dispute the underlying liabilities. The Commissioner also contends that the settlement officer did not abuse his discretion in denying Minority Health’s installment agreement because Minority Health failed to fulfill its federal tax deposit obligations. The Court ordered Minority Health to respond by September 22, 2017; it filed a response on September 26, 2017.

¹All section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated.

Because we find that there is no genuine dispute as to any material fact, we grant Commissioner's motion for partial summary judgment.

Background

Minority Health is incorporated in Indiana and incurred quarterly employment tax liabilities for the taxable periods ending December 31, 2010, December 31, 2011, December 31, 2012, March 31, 2013, June 30, 2013, and September 30, 2013. Minority Health filed Form 941, Employer's Quarterly Federal Tax Return, but did not fully pay the employment tax liability it reported. The Commissioner assessed the liability shown on the returns and added interest and penalties because the returns were not timely filed and the amounts were not timely paid.

The Commissioner began collection efforts and grouped the taxable periods into three notices. We take each in turn.

A. Periods Ending Dec. 31, 2011, Dec. 31, 2012, and Mar. 31, 2013

On October 25, 2013, the Commissioner issued Minority Health a final notice of intent to levy for the taxable periods ending December 31, 2011, December 31, 2012, and March 31, 2013. Minority Health had 30 days to request an appeals hearing pursuant to section 6330(a), which it failed to do.

On November 7, 2013, the Commissioner issued Minority Health a notice of federal tax lien for the taxable periods ending December 31, 2011, December 31, 2012, and March 31, 2013. Minority Health timely requested a collection due process hearing on December 12, 2013. In its request for a hearing, Minority Health stated that "funds paid is (sic) not been credied (sic) as requested & after the pass of our payroll agent, we also wanted to verify balance owed." Minority Health requested an installment agreement, but did not dispute the amount of the underlying liability.

B. Periods Ending Dec. 31, 2010 and Sept. 30, 2013

On March 3, 2014, the Commissioner issued Minority Health a final notice of intent to levy for the taxable periods ending December 31, 2010 and September 30, 2013. Minority Health had 30 days to request an appeals hearing pursuant to section 6330(a), which it failed to do.

On March 18, 2014, the Commissioner issued Minority Health a notice of federal tax lien for the taxable periods ending December 31, 2010 and September 30, 2013. Minority Health timely requested a collection hearing on April 23, 2014. In its request for a hearing, Minority Health did not state a reason for the hearing and did not dispute the amount of the underlying liability.

C. Period Ending June 30, 2013

On June 30, 2014, the Commissioner issued Minority Health a notice of federal tax lien for the taxable period ending June 30, 2013. Unlike the other periods, the Commissioner had not previously issued a final notice of intent to levy for this taxable period. Minority Health timely requested a collection hearing on June 19, 2014, requesting an installment agreement, but did not dispute the amount of the underlying liability.

D. Collection Hearing

Minority Health's three collection hearing requests were consolidated and presided over by the same settlement officer. On July 31, 2014, the settlement officer mailed a letter to Minority Health scheduling a hearing for August 21, 2014, instructing Minority Health to contact him by telephone or to arrange a different hearing date. Additionally, the settlement officer requested that Minority Health submit a completed Form 433-B, Collection Information Statement, a completed and signed employer's quarterly federal tax return for the taxable period ending June 30, 2014, and proof of a timely deposit of all federal employment taxes for the taxable period ending September 30, 2014.

Minority Health failed to contact the settlement officer to arrange an alternate hearing date, failed to provide a Collection Information Statement, failed to sign and submit quarterly tax returns for the taxable period ending June 30, 2014, and failed to provide proof of a deposit of all federal employment taxes for the taxable period ending September 30, 2014. The settlement officer mailed a follow-up letter on August 21, 2014, requesting Minority Health provide the requested information within 14 days. In addition to the follow-up letter, the settlement officer received a call from Minority Health's power of attorney on August 25, 2014, who requested a fax of the July 31, 2014 letter. The settlement officer refaxed the letter on August 25, 2014, and again on August 28, 2014.

On September 11, 2014, the settlement officer received a copy of Minority Health's quarterly tax returns for the taxable period ending June 30, 2014, and

completed Collection Information Statement. Minority Health did not provide proof they were compliant with federal tax deposits for the taxable period ending September 30, 2014.

The settlement officer notified Minority Health on September 30, 2014 that he could not offer a collection alternative if Minority Health was not current with its federal tax deposit requirement for the taxable period ending September 30, 2014. The Commissioner issued notices of determination on October 16, 2014, sustaining all three liens.

Discussion

The issue before this Court is whether we should grant the Commissioner's motion for partial summary judgment. Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in controversy. We may grant summary judgment only if there is no genuine dispute as to any material fact.²

The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute as to any material fact.³ "In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party."⁴ When a motion for summary judgment is made and properly supported, the nonmoving party may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine dispute for trial.⁵

In a collection hearing, a taxpayer may raise any issue that is relevant to an unpaid tax or proposed levy, including challenges to the appropriateness of the collection action and offers of collection alternatives.⁶ In addition, a taxpayer may

²Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

³Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994).

⁴FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

⁵Rule 121(d).

⁶Sec. 6330(c)(2)(A).

challenge the existence or amount of the underlying tax liability if the taxpayer did not previously have the opportunity to dispute it.⁷ A taxpayer who previously receives notice under section 6330 “with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer had a prior opportunity to dispute the existence or amount of the underlying tax liability”, and is unable to dispute the liability under a section 6320 hearing.⁸

Here, the underlying liability for the taxable periods ending December 31, 2010, December 31, 2011, December 31, 2012, March 31, 2013, and September 30, 2013, may not be placed in issue. Minority Health received a final notice of intent to levy under section 6330 for those periods on October 25, 2013 and March 3, 2014. Because Minority Health received the final notice of intent to levy, could have raised the underlying liability in response to that notice, but did not request a hearing, it may not challenge the underlying liability as to those periods in this collection case.⁹

Where the validity of the underlying liability is not properly at issue, we review the Commissioner’s determination for abuse of discretion.¹⁰ Minority Health may prove an abuse of discretion by showing that the Commissioner exercised his discretion arbitrarily, capriciously, or without sound basis in fact or law.¹¹ The determination by the settlement officer must take three things into consideration: (1) verification that the requirements of the applicable law and administrative procedure have been met, (2) issues raised by the taxpayer, and (3) whether any proposed collection action balances the need for efficient tax collection with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.¹² We take each in turn.

⁷Sec. 6330(c)(2)(B).

⁸Sec. 301.6320-1(e)(3) Q&A-E7, Proced. & Admin. Regs.

⁹See sec. 6330(c)(2)(B); Sec 301.6320-1(e)(3) Q&A-E7, Proced. & Admin. Regs.

¹⁰Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000).

¹¹See Giamelli v. Commissioner, 129 T.C. 107, 111 (2007).

¹²Secs. 6320(c), 6330(c)(3); Lunsford v. Commissioner, 117 T.C. 183, 184 (2001).

The settlement officer verified that all legal and procedural requirements had been met before the filing of the notice of intent to lien.

The settlement officer did not abuse his discretion when considering the installment agreement suggested by Minority Health. The settlement officer could not consider an installment agreement because Minority Health was not in compliance with federal tax deposits.¹³

Finally the settlement officer determined that the levy was no more intrusive than necessary.

Conclusion

There is no genuine dispute as to the material facts with respect to the taxable periods ending December 31, 2010, December 31, 2011, December 31, 2012, March 31, 2013, and September 30, 2013, and we must render a decision for the Commissioner as a matter of law. Minority Health had a prior opportunity to dispute the underlying liability for those periods and it failed to do so. It is precluded from challenging the liability in this proceeding. Additionally, the Commissioner did not abuse his discretion in denying Minority Health's request for an installment agreement. Accordingly, it is

ORDERED that the Commissioner's motion for partial summary judgment, filed August 31, 2017, is granted.

**(Signed) Ronald L. Buch
Judge**

Dated: Washington, D.C.
October 19, 2017

¹³See Boulware v. Commissioner, T.C. Memo 2014-80, at *21 (It is not an abuse of discretion when a settlement officer determines that a taxpayer is ineligible for a collection alternative because the taxpayer is not currently in compliance with his current tax obligations as of the date of the CDP hearing.); see also I.R.M 5.14.1.4.2 (Sept. 19, 2014) ("Filing and paying compliance must be considered prior to determining that the best manner of paying delinquent taxes is through an installment agreement. * * * Payment compliance = all required federal tax deposits and/or estimated tax payments are current.").