

UNITED STATES TAX COURT
WASHINGTON, DC 20217

BRENDA ANN DIXON,) **SD**
)
Petitioner,)
)
v.) Docket No. 22154-16SL.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER AND DECISION

This collection case is scheduled for the Court’s trial session beginning January 8, 2018, in Birmingham, Alabama. Brenda Ann Dixon seeks review under section 6330(d)(1) of the Commissioner’s determination to sustain a notice of intent to levy to recover Federal income tax owed for 2010, 2011, and 2013.¹

On October 25, 2017, the Commissioner filed a motion for summary judgment under Rule 121, arguing that Ms. Dixon is not current in her tax filing and payment obligations and is therefore ineligible for collection alternatives. The Court ordered Ms. Dixon to respond to the motion, and she did. Because we find that there is no genuine dispute as to any material fact, we grant the Commissioner’s motion for summary judgment.

Background

Ms. Dixon received a notice of intent to levy for tax years 2010, 2011, and 2013 on April 14, 2016. She timely requested an appeal. In doing so, Ms. Dixon requested an offer in compromise and stated that her liability for 2011 should be lowered after filing her 2011 Form 1040, U.S. Individual Income Tax Return, replacing the substitute return that had been filed by the Commissioner. Ms. Dixon provided no other documentation regarding her 2011 Federal income tax liabilities and does not dispute the underlying liabilities for 2010 and 2013.

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.

The appeals officer sent Ms. Dixon a letter on July 20, 2016, acknowledging receipt of Ms. Dixon's appeal request and scheduling a telephone conference for August 23, 2016. The letter also requested that Ms. Dixon submit (1) a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, within 14 days of the date of the letter; (2) a signed 2014 tax return within 21 days; and (3) a Form 656, Offer in Compromise, with any applicable fees within 14 days. Notably, the 2014 tax return was already more than a year overdue. Through the administrative process, Ms. Dixon had missed several opportunities to provide her 2014 return.

Ms. Dixon and the appeals officer held the telephone conference as scheduled, but Ms. Dixon did not provide the requested documents. The appeals officer informed Ms. Dixon that the telephone conference was Ms. Dixon's requested collection hearing and explained the hearing process to her. Ms. Dixon stated that she had filed her 2011 Form 1040 to replace the Commissioner's substitute return and made several payments, but did not know how they were applied. The appeals officer confirmed receipt of Ms. Dixon's 2011 Form 1040 and that Ms. Dixon's tax liability had been adjusted to conform to the filed Form 1040. But liabilities remained unpaid, and the appeals officer informed Ms. Dixon that the levy would be sustained if she did not provide the requested documents.

The appeals officer closed the appeal because Ms. Dixon failed to submit the requested documents. After the appeals officer certified that all of the procedural requirements had been met the Commissioner sustained the levy, issuing Ms. Dixon a notice of determination of September 8, 2016.

Ms. Dixon timely petitioned this Court on October 12, 2016, while residing in Alabama. In her petition, Ms. Dixon states that she "believe[s] that a fair determination could not be made within a telephone conversation", and that she "want[s] to comply with tax requirements and [she has] fallen behind due to keeping up with [her] health and work."

In Ms. Dixon's response to the Commissioner's motion for summary judgment, she cites Savoy v. Commissioner, T.C. Memo 2014-162, aff'd, 589 F. App'x 187 (4th Cir. 2015) to support her position that "[r]espondent has abused her discretion by not giving any weight to Petitioner's illness and disability in the Respondent's determination in the case."

Discussion

The issue before this Court is whether we should grant the Commissioner's motion for 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 challenge the existence or amount of the underlying tax liability if the taxpayer did not previously have the opportunity to dispute it.⁷ This Court considers an underlying liability on review only if the taxpayer properly raises the issue during the collection hearing.⁸

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).

⁷Sec. 6330(c)(2)(B).

⁸Giamelli v. Commissioner, 129 T.C. 107, 115 (2007); see also sec. 301.6330-1(f)(2), Q&A-F3, Proced. & Admin. Regs.

Here, the underlying liability is not properly at issue. To the extent Ms. Dixon challenged her liability for 2011, the Commissioner made the requested adjustments. The evidence shows that the Commissioner accepted Ms. Dixon's 2011 return and adjusted her liability accordingly. The evidence also shows that the Commissioner applied the payments about which Ms. Dixon inquired. There is no remaining dispute as to the 2011 liability. As for 2010 and 2013, Ms. Dixon did not dispute those liabilities.

Where the validity of the underlying liability is not properly at issue, we review the Commissioner's determination for abuse of discretion.⁹ Ms. Dixon may prove an abuse of discretion by showing that the Commissioner exercised her discretion arbitrarily, capriciously, or without sound basis in fact or law.¹⁰

Before turning to the Commissioner's determination, we address Ms. Dixon's assertion that an in-person hearing was necessary. We have long held that the Commissioner is not required to hold an in-person hearing.¹¹ And the law is the same for Ms. Dixon; she is not entitled to an in-person hearing.

Turning to the Commissioner's determination, 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.

The settlement officer verified that all legal and procedural requirements were met before the filing of the notice of intent to levy.

The settlement officer did not abuse her discretion when considering the issues raised by Ms. Dixon because she was not in compliance with the tax laws,

⁹Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000).

¹⁰See Giamelli v. Commissioner, 129 T.C. at 111.

¹¹Katz v. Commissioner, 115 T.C. 329, 337-338 (2000).

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

including filing tax returns.¹³ Even after being provided additional time to come into compliance, Ms. Dixon failed to do so. Additionally, the appeals officer could not consider an installment agreement because Ms. Dixon was not in compliance with federal filing requirements and failed to return the requested paperwork.¹⁴

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

Ms. Dixon's incorrectly cites Savoy v. Commissioner, T.C. Memo 2014-162 for her proposition that the appeals officer "abused her discretion by not giving any weight to [Ms. Dixon's] illness and disability". In Savoy, the Commissioner conceded that the appeals officer abused his "discretion at the initial CDP hearing by insufficiently taking Mr. Savoy's disability into account in setting the deadline for his submission of information challenging his underlying liability".¹⁵ The Court did not find that the appeals officer abused his discretion. But rather, the Commissioner voluntarily conceded the issue in agreeing to a remand, which the Court granted. When the matter returned to the Court from the remand, the Court refused to substitute its own judgment for that of the settlement officer.¹⁶

As in Savoy, absent an abuse of discretion, we will not substitute our judgment for that of the appeals officer. Here, the appeals officer followed all

¹³Gardner v. Commissioner, T.C. Memo. 2017-107, at *9; Hull v. Commissioner, T.C. Memo. 2015-86, at *15.

¹⁴See Boulware v. Commissioner, T.C. Memo 2014-80, at *21, aff'd, 816 F.3d 133 (D.C. Cir. 2016) (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 in compliance with his current tax obligations as of the date of the hearing.).

¹⁵Savoy v. Commissioner, T.C. Memo 2014-162, at *20.

¹⁶"The Court does not conduct an independent review and substitute its own judgment for that of the settlement officer." Savoy v. Commissioner, T.C. Memo 2014-162, at *15 (citing Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006)). "If the settlement officer follows all statutory and administrative guidelines and provides a reasoned, balanced decision, the Court will not re-weigh the equities." Savoy v. Commissioner, T.C. Memo 2014-162, at *15 (citing Thompson v. Commissioner, 140 T.C. 173, 179 (2013)).

statutory and administrative guidelines and did not abuse her discretion in taking Ms. Dixon's personal circumstances into consideration.

Conclusion

There is no genuine dispute as to any material fact with respect to this collection action, and we must render a decision for the Commissioner as a matter of law. Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment, filed October 25, 2017, is granted. It is further

ORDERED AND DECIDED that the Commissioner's Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated September 8, 2016, is sustained.

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

Entered: **NOV 30 2017**