

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

NOAH M. BURSTEIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 11816-17 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER AND DECISION**

This collection review case is before the Court on respondent's Motion for Summary Judgment, with a supporting Declaration, filed pursuant to Rule 121 on October 5, 2017.<sup>1</sup> Respondent contends that the Court should affirm the determination of the IRS Office of Appeals (Appeals Office) sustaining a proposed levy action to collect petitioner's unpaid Federal income taxes for the taxable years 2010, 2011, and 2012. Although the Court directed petitioner to file a response to respondent's motion for summary judgment, he failed to do so.<sup>2</sup>

Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b). Respondent's motion for summary judgment is well founded based on the averments therein and the declaration and related exhibits attached thereto. We conclude that there is no dispute as to a material fact and that respondent is entitled

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<sup>1</sup>Rule references are to the Tax Court Rules of Practice and Procedure, and section references are to the Internal Revenue Code, as amended.

<sup>2</sup>By failing to file a response to respondent's motion, petitioner waived his right to contest it. Rule 121(d); Aguirre v. Commissioner, 117 T.C. 324, 327 (2001).

to judgment as a matter of law sustaining the notice of determination upon which this case is based.

Section 6330 provides procedures for administrative and judicial review of the Secretary's collection actions. In rendering an administrative determination in a collection review proceeding under section 6330, the Appeals Office must verify that any applicable law or administrative procedure has been met in processing the case. Sec. 6330(c)(1). The Appeals Office also must consider any issues raised by the taxpayer relating to the collection action, including offers of collection alternatives, appropriate spousal defenses, and challenges to the appropriateness of the collection action. Sec. 6330(c)(2)(A). A taxpayer may challenge the existence or amount of his underlying tax liability if the taxpayer did not receive a notice of deficiency or did not otherwise have an opportunity to dispute such tax liability. Sec. 6330(c)(2)(B). Finally, the Appeals Office must consider whether the collection action balances the need for efficient collection against the taxpayer's concern that collection be no more intrusive than necessary. Sec. 6330(c)(3)(C).

The Tax Court has jurisdiction to review the administrative determination made by the Appeals Office. Sec. 6330(d)(1). If the taxpayer's underlying tax liability is properly in dispute, we review the administrative determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Otherwise, as is the case here, we review the determination for abuse of discretion. Id. at 182. An abuse of discretion occurs if the Appeals Office exercises its discretion "arbitrarily, capriciously, or without sound basis in fact or law." Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

Petitioner alleged in the petition that he would like to present a collection alternative. However, the record shows that he failed to propose a collection alternative, such as an installment agreement or offer in compromise, during the course of the administrative hearing. Moreover, petitioner failed to provide the Appeals Office with the financial information that it needed to allow for a meaningful evaluation of his eligibility for a collection alternative. It is well settled that the Appeals Office is justified in rejecting a proposed collection alternative, such as an installment agreement or an offer in compromise, if the taxpayer fails to submit requested financial information or is not in compliance with Federal tax laws. See, e.g., Pough v. Commissioner, 135 T.C. 344, 351(2010).

The Appeals Office properly verified that the requirements of all applicable laws and administrative procedures were met in the processing of petitioner's case

and that the proposed levy balances the Government's interest in the efficient collection of taxes with petitioner's concerns that the collection action be no more intrusive than necessary. In sum, the record shows that the Appeals Office did not abuse its discretion in this case.

Premises considered, it is

ORDERED that respondent's Motion for Summary Judgment, filed October 5, 2017, is granted. It is further

ORDERED AND DECIDED that respondents' notice of determination concerning collection action(s) under section 6320 and/or 6330, dated April 26, 2017, upon which this case is based, is sustained.

**(Signed) Daniel A. Guy, Jr.  
Special Trial Judge**

ENTERED: **DEC 07 2017**