

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

RANDOLPH JENNINGS & JENNIFER)
JENNINGS,)
)
Petitioners,)
)
v.) Docket No. 25587-15SL
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER AND DECISION

This section 6330(d)¹ case is before the Court on cross motions for summary judgment -- petitioners' filed on July 15, 2016, and respondent's filed on July 21, 2016. Giving due regard to the statements made in the motions and materials submitted in support of each, and taking into account the stipulation of facts filed April 21, 2017, we are satisfied that there are no material facts in dispute in this case, and that decision can be entered as a matter of law. That being so, we are further satisfied that resolving the matter upon summary judgment is appropriate, see Rule 121, and summarize our reasons for doing so in the following paragraphs.

In a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated September 1, 2015 (notice), respondent determined that a levy is an appropriate collection action (proposed collection action) with respect to petitioners' outstanding 2009 and 2010 Federal income tax liabilities (underlying liabilities). The underlying liabilities, including taxes and related amounts, were assessed as result of Federal income taxes reported on, but unpaid with petitioners' joint Federal income tax returns for those years.

Petitioners were given the required notice of respondent's proposed collection action, and by letter dated July 24, 2014, addressed to respondent's post office box in Cincinnati, Ohio, they requested an administrative hearing in order to

¹Unless otherwise noted, section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov.

challenge that action. They did not dispute the existence or the amounts of the underlying liabilities in their request; instead they proposed an offer in compromise (OIC) as a collection alternative. Their request also notes that they could not pay the underlying liabilities.

The underlying liabilities, along with petitioners' outstanding Federal income tax liabilities for 2003, 2004, 2005, 2006, 2007, 2008, 2011, 2012 and 2013, were the subject of an OIC submitted on behalf of petitioners on July 30, 2014, to respondent's "Memphis IRS Center COIC Unit". The liabilities covered in the OIC totaled almost \$150,000; petitioners offered \$300, payable in five monthly \$60 installments, to compromise those liabilities. Like the underlying liabilities, the other liabilities, including taxes and related amounts, covered in the OIC were assessed as a result of Federal income taxes reported on, but unpaid with petitioners' joint Federal income tax returns for those other years.

The OIC was not submitted to the SO during the administrative hearing. The OIC was submitted after petitioners made their request for an administrative hearing but before respondent acknowledged petitioners' request and respondent's settlement officer (SO) scheduled the administrative hearing. Nevertheless, apparently the SO became aware of the OIC and decided to await the response from the office to which the OIC was submitted before considering the collection alternative requested in petitioners' request for the hearing.

Following a thorough analysis of petitioners' financial situation, and taking into account petitioners' employment prospects and medical conditions, the office reviewing the OIC concluded that petitioners' reasonable collection potential (RCP) far exceeded the amount of the OIC and rejected it. The RCP, in part, was computed with reference to the cash surrender value of a life insurance policy insuring the life of one of the petitioners. Following the lead of the office that reviewed the OIC, the SO rejected petitioners' request for a collection alternative to the proposed collection action, but offered them the opportunity to increase the amount of the OIC, which apparently would have required them to agree to surrender the above-referenced life insurance policy. This they were not willing to do, and the notice was issued.

According to petitioners, the SO abused his discretion by not taking into account petitioners' limited employment opportunities and their poor health. But consideration to petitioners' situations on both points was given in the computation of the RCP and rejection of the OIC by the office that reviewed it. According to

petitioners, the SO failed to take into account whether the proposed collection action was no more intrusive than it needed to be, but other than the rejection of the OIC, petitioners failed specifically to explain what collection action the SO failed to consider that might have been less intrusive than the proposed levy.²

Accepting or rejecting an OIC is within the discretion of the Commissioner. See sec. 301.7122-1, Proc. & Admin. Regs. Discretionary decisions made in response to an OIC proposed by a taxpayer will not be upset unless it is demonstrated that the decision was arbitrary in one way or another and could not be supported in law or in fact; whether we agree with the decision is unimportant. See Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff'd, 469 F. 3d 27 (1st Cir. 2006). From what has been submitted, it can hardly be said that the rejection of the OIC and respondent's determination to proceed with collection as determined in the notice is not supported in fact or in law. The office that reviewed the OIC considered the petitioners' financial situation, future employment prospects, health, and assets in computing the RCP. The RCP far exceeded the amount of petitioners' OIC, and the OIC was rejected. Petitioners were given the opportunity to increase the OIC, but declined to do so. That being so, we find that the determination reflected in the notice does not reflect an abuse of discretion by respondent.

It follows, and is

ORDERED that petitioner's motion is denied and respondent's motion is granted. It is further

ORDERED and DECIDED that respondent may proceed with collection as determined in the notice.

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED: **DEC 18 2017**

²Respondent's rejection of the OIC notwithstanding, as best as can be determined from what has been submitted, the underlying liabilities, if not all of the liabilities covered in the OIC, were considered currently not collectable by respondent as of the date the notice was issued.