

UNITED STATES TAX COURT
WASHINGTON, DC 20217 PA

ROBYN H. FARRELL,)
)
Petitioner,)
)
v.) Docket No. 20345-16
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER AND DECISION

This section 6330(d)¹ case is before the Court on respondent’s motion for summary judgment, filed March 6, 2017. By Order of the same date, petitioner’s response to respondent’s motion was made due on or before March 28, 2017. Petitioner has not responded to the motion.² That being so, we proceed as though the facts relied upon in support of his motion are not in dispute, and those facts are summarized below.

In a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated August 11, 2016 (notice),³ respondent determined that a levy is an appropriate collection action (proposed collection action) with respect to petitioner’s then outstanding 2010, 2011 and 2012 Federal income tax liabilities (underlying liabilities). The underlying liabilities were assessed in due course following the issuance of a notice of deficiency for each of the years referenced in the preceding sentence. See sec. 6213(c).

¹Section 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.

²As petitioner was advised in the Order, her failure to respond as directed could result in the granting of respondent’s motion and entry of decision against her. See Rule 121(d); see, e.g., Lunsford v. Commissioner, 117 T.C. 183, 187 (2001).

³A copy of the notice is attached to respondent’s answer.

In her request for an administrative hearing, see sec. 6330(b)(1), petitioner suggested that an offer-in-compromise be considered as an alternative to the proposed collection action. She also advised that she could not pay the underlying liabilities. She did not challenge the existence or the amount of the underlying liabilities at the administrative hearing, and she does not do so here. That being so, we review the determination made in the notice for abuse of discretion. See Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). That is, we consider whether the determination was made, “arbitrarily, capriciously, or without sound basis in fact or law”. Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

Respondent’s settlement officer requested that petitioner support her request for collection alternatives by the submission of certain financial information to the settlement officer; petitioner did not provide the information. Without that financial information the settlement officer could not properly evaluate petitioner’s ability to pay the underlying liabilities. See, e.g., Kindred v. Commissioner, 454 F.3d 688, 697 (7th Cir. 2006); Olsen v. United States, 414 F.3d 144, 151 (1st Cir. 2005); Murphy v. Commissioner, 125 T.C. 301, 315 (2005), aff’d, 469 F.3d 27 (1st Cir. 2006); Wright v. Commissioner, T.C. Memo. 2012-24. Furthermore, although petitioner suggested that an offer-in-compromise be considered as a collection alternative to the proposed collection action, she did not submit one to the settlement officer during the administrative hearing.⁴ Respondent’s rejection of a requested, but not made collection alternative does not require that the determination made in the notice be set aside as an abuse of discretion. See, e.g., Kindred v. Commissioner, 454 F.3d at 696; Kendricks v. Commissioner, 124 T.C. 69, 79 (2005).

In all other respects, respondent’s motion shows that respondent has proceeded as required under section 6330, and nothing submitted by petitioner suggests otherwise. That being so, after considering what has been submitted, we are satisfied that there are no genuine issues of material fact in dispute in this case, and that respondent is entitled to decision as a matter of law. See Rule 121. It follows, and is

ORDERED that respondent’s motion is granted. It is further

⁴According to the petition, petitioner submitted an offer-in-compromise to one of respondent’s offices two weeks before the petition was filed. We note that petitioner is entitled to pursue any collection relief that she might be entitled to independent of this proceeding.

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

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED: **DEC 28 2017**