

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

JENNIFER MANE KELLY,)	
F.K.A. JENNIFER MANE SHEEHAN,)	
)	
Petitioner,)	
)	
v.)	Docket No. 4709-17 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This is a “collection due process” (“CDP”) case, brought under I.R.C. section 6330. Petitioner Jennifer Mane Kelly, invoking our jurisdiction under section 6330(d)(1), seeks review of a determination by the Office of Appeals of the Internal Revenue Service (“IRS”) that sustains the filing of a notice of lien to collect her unpaid income tax for 2011, 2012, and 2013. Respondent, the Commissioner of the IRS, filed a motion for summary judgment on December 21, 2017; and Ms. Kelly failed to file a response. We will grant the motion.

Background

The Commissioner’s motion sets out and supports the following facts, which we assume true:

The IRS has determined that Ms. Kelly owes unpaid income tax, penalties, and interest for 2008, 2009, and 2011 totaling more than \$30,000. The Commissioner’s motion shows that Ms. Kelly filed a return for 2011, and then an amended return, and that she did not file returns for 2012 or 2013. For each of the three years, the IRS issued to her a statutory notice of deficiency (“SNOD”) pursuant to section 6212, but she did not challenge those SNODs by filing petitions in the Tax Court. (The 2011 SNOD included an accuracy-related penalty, and that penalty had previously been approved in compliance with section 7651(b)(1).)

The IRS therefore assessed the deficiencies. When she did not pay her liabilities after notice and demand, the IRS recorded notices of tax liens at the local county registry and district court, and then sent her a “Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320” (the “Lien Notice”). (The date of the lien notice is unclear. It seems to be dated “12/01/2015”, but it reports a lien filing on “12/02/2015” and it requires a CDP request by “01/08/2016”. Since the Commissioner concedes that her CDP request was timely, we do not consider this anomaly further.)

Ms. Kelly submitted to the IRS a Form 12153, “Request for Collection Due Process or Equivalent Hearing”. On that form she did not request any collection alternative (such as an installment agreement). Her only contention was as to liability--i.e., “I am not liable for the amount owed”--and she mentioned only the year 2011. By letter of March 29, 2016, IRS Appeals told her that she was to have her CDP hearing by telephone conference and stated, “Please call me on 04/26/2016 at 3:00 pm CST.”

Ms. Kelly did not provide amended returns and failed to call for her scheduled telephone conference. By letter dated June 6, 2016, Appeals offered Ms. Kelly the opportunity to provide information for consideration by July 7, 2016. Ms. Kelly did not respond to that letter.

On January 19, 2017, Appeals issued to Ms. Kelly a Notice of Determination, sustaining the NFTL filing. Ms. Kelly mailed to this Court a petition dated February 18, 2017; and we assume in her favor that it was mailed on that date and was therefore timely. The petition again challenged the liability for 2011. It also made a general statement about being “willing to work with IRS” and “hopefully have a clean slate”, which we construe to express a wish for some sort of collection alternative.

On December 21, 2017, the IRS moved for summary judgment; and by order dated December 22, 2017, the Court ordered Ms. Kelly to file a response to the IRS's motion “no later than January 12, 2018”. In that order the Court explained some of the requirements for opposing summary judgment and stated:

If Ms. Kelly disagrees with the facts set out in paragraphs 5-25 of the IRS's motion for summary judgment, then her response should point out the specific facts in dispute. Her response should state, by number, any assertion with which she disagrees, should explain the reason for her disagreement, and should cite whatever evidence supports her

position. If she disagrees with the IRS's argument as to the law (in paragraphs 26-54 of the IRS's motion), then her response should also set out her position on the disputed legal issues. Q&As that the Court has prepared on the subject "What is a motion for summary judgment? How should I respond to one?" are available at the Court's website and are printed on the page attached to this order.

Ms. Kelly should note that Tax Court Rule 121(d) provides, "If the adverse party [i.e., Ms. Kelly] does not so respond [to a motion for summary judgment], then a decision, if appropriate, may be entered against such party".

Ms. Kelly has not filed a response.

Discussion

The IRS's motion is well founded; its factual assertions are undisputed; its legal arguments are sound. For each of the years at issue, the IRS issued to Ms. Kelly a statutory notice of deficiency (and she does not allege non-receipt). Consequently, she was not eligible to challenge her underlying liability in the CDP hearing. See sec. 6330(c)(2)(B). In any event, she failed to make that challenge before Appeals and therefore cannot make now it before the Tax Court. Giamelli v. Commissioner, 129 T.C. 107, 114 (2007).

Ms. Kelly did not propose any collection alternative to Appeals at the CDP hearing; and it is not an abuse of discretion for Appeals to fail to consider a collection alternative that is never proposed, see Kendrick v. Commissioner, 124 T.C. 69, 79 (2005). If (as we assume) her petition filed with this Court expresses a desire for a collection alternative, we cannot entertain that issue since she failed to raise it before Appeals. Giamelli, supra. Because Ms. Kelly did not propose any collection alternative, Appeals did not abuse its discretion by determining to sustain the notice of lien.

Conclusion

For the foregoing reasons, and for the reasons stated in the IRS's motion, it is

ORDERED that respondent's motion for summary judgment filed December 21, 2017, is granted, both on its merits and, in the alternative, on the

ground that Ms. Kelly failed to comply with the Court's order that she respond to the motion (see Rule 121(d); see also Rule 123(b)). It is further

ORDERED AND DECIDED that respondent may proceed with the collection of petitioner's Federal income tax for 2011, 2012, and 2013 as described in the "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330" dated January 19, 2017.

**(Signed) David Gustafson
Judge**

ENTERED: **JAN 29 2018**