

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CARY L. CLAUSEN,)
)
Petitioner,) **CT**
)
v.) Docket No. 18947-16 L
)
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 December 9, 2016. Petitioner’s objection to respondent’s motion was filed January 27, 2017. Giving due regard to the statements contained in respondent’s motion and petitioner’s objection, and taking into account the parties’ submissions in support of their respective positions, 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, resolving the matter upon summary judgment is appropriate, see Rule 121, and our reasons for doing so, along with the undisputed facts are summarized in the following paragraphs.

In a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated August 9, 2016 (notice), respondent determined that a levy is an appropriate collection action with respect to petitioner’s outstanding 2007, 2008, 2009, 2010, 2011, 2012, and 2013 Federal income tax liabilities (underlying liabilities). The underlying liabilities with respect to 2007, 2008, and 2009 were assessed in accordance with the decisions of this Court entered in deficiency cases at docket Nos. 5940-12 and 6141-12; the underlying liabilities with respect to 2010, 2011, 2012, and 2013 were assessed with reference to the Federal income tax liabilities reported on, but unpaid with petitioner’s jointly filed Federal income tax returns for those years.

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.

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Petitioner was given the required notice of respondent's proposed collection action, and he timely requested an administrative hearing in order to challenge that action. He did not dispute the existence or the amounts of the underlying liabilities in his request; instead he proposed an installment agreement (IA) and an offer in compromise (OIC) as collection alternatives. His request also notes that he could not pay the "full amount owed." Petitioner did not pursue an IA during the administrative process, and he does not do so here.

By letter dated October 1, 2015, petitioner's attorney, Howard N. Kaplan, submitted an OIC to respondent's Appeals Office in Holtsville, NY, based on doubt as to collectability. At the time the underlying liabilities totaled approximately \$193,000; petitioner offered \$15,000 in full settlement of those liabilities.

On June 9, 2016, petitioner and Mr. Kaplan had a face-to-face hearing with respondent's settlement officer (SO). At the hearing, Mr. Kaplan advised respondent's SO: (1) of petitioner's medical issues; (2) of Debra L. Clausen's (petitioner's spouse) medical issues; (3) that petitioner and his spouse were responsible for paying food, clothing, and housing expenses for their son who had moved back into the family home, and at the time was suffering from PTSD as a result of tours in Afghanistan and was in a treatment program for alcohol abuse; (4) that he owed outstanding tax liabilities to the state of Nebraska; and (5) that he disputed the amount of vehicle ownership/operating costs allowed by respondent's examiner.

Following a thorough analysis of petitioner's financial situation, including assets, income and expenses, and taking into account the aforementioned items addressed at the hearing, respondent's SO concluded that petitioner's reasonable collection potential (RCP) exceeded the underlying liabilities. The RCP, in part, was computed with reference to petitioner's equity in assets of \$24,635, as well as his future payment ability of \$191,535, calculated at \$1,695 per month over the 113 months remaining on the collection statute. The income determination was based on an analysis of the income and expenses reported on petitioner's Form 433-A, Profit and Loss Statement, and wage statements, that petitioner provided during the administrative process. Following his review, respondent's SO concluded that the OIC should be rejected and caused the notice to be issued.

According to petitioner, the SO abused his discretion by not taking into account petitioner's inability to pay the underlying liabilities in full, and "special circumstances" that "warrant acceptance of an amount less than could be paid." Contrary to petitioner's claim, however, respondent's SO took into account the "special circumstances" presented during the administrative process in the computation of the RCP and rejection of the OIC.

This Court has jurisdiction under section 6330 to review the determination made in the notice. See sec. 6330(d). Because petitioner does not dispute the existence or the amounts of the underlying liabilities, respondent's determination to reject petitioner's collection alternative is reviewed for abuse of discretion. See Goza v. Commissioner, 114 T.C. 176 (2000). That is, we review the determination to see if it was arbitrary, capricious, or without sound basis in fact or law. See, e.g., Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

Section 7122(a) authorizes the Secretary to compromise any civil case arising under the internal revenue laws. The regulations set forth three grounds for the compromise of a liability: (1) doubt as to liability; (2) doubt as to collectability; or (3) promotion of effective tax administration. Sec. 301.7122-1T(b), Temporary Proced. & Admin. Regs. See Orum v. Commissioner, 123 T.C. 1, 13 (2004), aff'd, 412 F.3d 819 (7th Cir. 2005).

Doubt as to collectability exists when a taxpayer's assets and income are less than the tax liabilities. Sec. 301.7122-1(b)(2), Proced. & Admin. Regs. A determination of doubt as to collectability includes a calculation of the taxpayer's ability to pay. Internal Revenue Manual (IRM) pt. 5.8.5.2(1) (Sept. 30, 2013). As noted, respondent's SO concluded that petitioner's RCP exceeded the underlying liabilities, and therefore the OIC could not be considered on that ground.

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 SO that reviewed the OIC considered petitioner's financial situation, and the "special circumstances"

presented during the administrative process. Following his review and thorough analysis, the SO reasonably concluded that the OIC did not reflect petitioner's RCP. That being so, we do not find the SO's rejection of the OIC to be arbitrary or capricious.

Petitioner did not propose any other collection alternative during the administrative hearing. In all other respects respondent's motion shows that he has complied with the requirements of section 6330 and nothing in the record suggests otherwise. It follows and is

ORDERED that 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: **FEB 26 2018**