

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DRC

JASON GRIGGS & ERIN GRIGGS, )  
 )  
 Petitioners, )  
 )  
 v. ) Docket No. 18225-16 L.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )

**ORDER AND DECISION**

This collection review case is before the Court on respondent’s Motion for Summary Judgment and To Impose a Penalty under I.R.C. 6673, with a supporting Memorandum of Law and supporting Declarations, filed pursuant to Rule 121 on July 20, 2017, and respondent’s Motion To Permit Levy filed on July 20, 2017.<sup>1</sup> Although the Court directed petitioners to file responses to respondent’s motions, petitioners failed to do so. By failing to file a response to respondent’s motion for summary judgment, petitioners waived their right to contest it. Rule 121(d); Aguirre v. Commissioner, 117 T.C. 324, 327 (2001).

In his motion for summary judgment, respondent contends that the Court should affirm the determination of the IRS Office of Appeals (Appeals Office) sustaining a proposed levy action to collect petitioners’ unpaid Federal income taxes for the taxable years 2010, 2012, and 2013. 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, the memorandum of law, and the declarations and related exhibits attached thereto. We conclude that there is no dispute as to a material fact and that respondent is entitled 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

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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.

appropriateness of collection action. Sec. 6330(c)(2)(A). A taxpayer may challenge the existence or amount of his or her 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 Appeals Office administrative decision de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Otherwise, as is the case here, we review the determination for an 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).

Petitioners stated in their petition that the installment agreement proposed by the Appeals Office was unconscionable. On further review of the administrative record, respondent filed a motion to remand the case to the Appeals Office for a further administrative hearing on the question whether petitioners might be eligible to have their accounts placed in "currently not collectible" status due to hardship. See Wright v. Commissioner, T.C. Memo. 2012-24, at \*3. To justify suspension of collection for hardship, a taxpayer must disclose financial records which show that he or she cannot afford to pay the liabilities. Id.

The Court granted respondent's motion to remand the case to the Appeals Office and provided the parties with ample time to exchange information and conduct a further administrative hearing. Unfortunately, for reasons which are not obvious on this record, petitioners failed to provide the Appeals Office with current financial information and they otherwise failed to participate in a further administrative hearing. It is well settled that the Commissioner is justified in rejecting a proposed collection alternative 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 record reflects that the Appeals Office properly verified that the requirements of all applicable laws and administrative procedures were met in the processing of petitioners' case and that the proposed levy balances the Government's need for the efficient collection of taxes with petitioners' concerns that the collection action be no more intrusive than necessary. In sum, the Appeals Office did not abuse its discretion in this case.

Section 6673(a)(1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of \$25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless. Without an explanation from petitioners, the record suggests that they instituted this proceeding primarily for purposes of delay. Considering all the facts and circumstances, however, we decline to impose a penalty pursuant to section 6673(a)(1).

Respondent also filed a motion to permit levy. Section 6330(e)(2) provides that the suspension of collection activities generally in effect during the pendency of an appeal in a collection review case shall not apply “if the underlying liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.” See Burke v. Commissioner, 124 T.C. 189 (2005). As discussed above, petitioners do not challenge the existence or amounts of the tax liabilities that respondent seeks to collect for the taxable years in issue. Given petitioners failure to cooperate with the Appeals Office when this matter was remanded for a further administrative hearing, and in the light of their failure to respond to respondent’s motion to permit levy, the Court is satisfied that respondent has shown good cause not to suspend the levy. Consequently, respondent’s motion to permit levy will be granted.

Accordingly, upon due consideration and for cause, it is

ORDERED that respondent’s Motion for Summary Judgment and To Impose a Penalty Under I.R.C. 6673, filed July 20, 2017, is granted in that respondent is entitled to judgment as a matter of law in this case. It is further

ORDERED that respondent’s Motion for Summary Judgment and To Impose a Penalty Under I.R.C. 6673, filed July 20, 2017, is denied in that the Court will not impose a penalty on petitioners under the provisions of I.R.C. section 6673. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action in respect of petitioners’ outstanding income tax liability for tax years 2010, 2012, and 2013, as determined in the Notice of Determination dated July 14, 2016, upon which notice this case is based. It is further

ORDERED that respondent’s Motion To Permit Levy, filed July 20, 2017, is granted.

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

ENTERED: **MAR 06 2018**