

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

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| BONNIE LOU BLACK, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Docket No. 16269-16SL. |
| |) | |
| COMMISSIONER OF INTERNAL REVENUE, |) | |
| |) | |
| Respondent |) | |

ORDER AND DECISION

This collection case was scheduled for the Court’s trial session beginning January 8, 2018, in Birmingham, Alabama. Bonnie Lou Black seeks review under section 6330(d)(1) of the Commissioner’s determination to sustain a notice of intent to levy to recover Federal income tax owed for 2012.¹

On November 9, 2017, the Commissioner filed a motion for summary judgment under Rule 121, arguing that the settlement officer did not abuse her discretion by not granting Ms. Black a collection alternative. She did not grant a collection alternative, in part, because Ms. Black had not submitted the necessary financial information, offered no alternatives to collection, and declined a proposed payment agreement. The Court ordered Ms. Black to respond to the motion, and she did. Because we find that there is no genuine dispute as to any material fact, we grant the Commissioner’s motion for summary judgment.

Background

The year at issue is 2012, but a discussion of Ms. Black’s 2011 tax year is also required. Ms. Black filed Federal income tax returns for 2011 and 2012. The Commissioner received a Form 1099, Miscellaneous Income for 2012, reporting \$18,800 of income to Ms. Black. The Commissioner issued a notice of deficiency for 2012 to Ms. Black on September 22, 2014. In the notice, the Commissioner

¹ All section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated.

increased Ms. Black's income for 2012 by \$18,800. Ms. Black did not respond to the notice.

The Commissioner then issued an erroneous CP-22A balance due notice for 2011 to Ms. Black on February 16, 2015. This notice stated Ms. Black owed \$8,384.18. One month later, on March 16, 2015, the Commissioner corrected his error and issued a CP-21C notice stating that Ms. Black owed nothing for 2011.²

On November 11, 2015, when the Commissioner issued a notice of intent to levy for tax year 2012. After receipt of the notice of intent to levy, Ms. Black timely submitted Form 12153, Request for a Collection Due Process or Equivalent Hearing, to the Commissioner. The settlement officer sent Ms. Black a letter on April 6, 2016, acknowledging receipt of Ms. Black's appeal and scheduling a telephone conference. The letter also requested Ms. Black submit (1) a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, within 14 days of the date of the letter; and (2) three months of income and bank statements.

Ms. Black and the settlement officer held a telephone conference on May 18, 2016, but Ms. Black did not provide the requested documents. The settlement officer informed Ms. Black that the telephone conference was Ms. Black's requested collection hearing and explained the hearing process to her. The settlement officer explained that the deficiency was a result of Ms. Black not reporting \$18,800 stated on the Form 1099. Ms. Black did not dispute the underlying tax liability. Ms. Black requested abatement of the penalties but did not agree to a proposed payment plan.

The settlement officer closed the appeal. After the settlement officer certified that all of the procedural requirements had been met the Commissioner sustained the levy, issuing Ms. Black a notice of determination on July 1, 2016.

² Tangentially related to this, Ms. Black receives social security benefits. This is related because, according to Ms. Black, the Commissioner's erroneous notice caused a reduction in her social security benefits. As best as can be hypothesized, the Social Security Administration came to believe, perhaps through information sharing, that Ms. Black's income had gone up in 2011. The hypothesis continues that, as a result of this supposed increase in income, the Social Security Administration reduced her benefits. Ms. Black asks that we remedy this, but we do not have jurisdiction to determine Social Security benefits, just tax deficiencies.

Ms. Black timely petitioned this Court on July 20, 2016. In her petition, Ms. Black argues about the underlying liability for 2011, not for 2012, but 2012 is the only year addressed in the notice underlying this case.

On November 9, 2017, the Commissioner filed a motion for summary judgment. In Ms. Black's response to the Commissioner's motion for summary judgment, Ms. Black only argues the underlying liability for 2012. Ms. Black states the Commissioner's determination was made in error. She argues that she has paid back taxes for the tax year 2012 and that the Commissioner owes her money.

Discussion

The issue before this Court is whether we should grant the Commissioner's motion for summary judgment. Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in controversy. We may grant summary judgment only if there is no genuine dispute as to any material fact.³

The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute as to any material fact.⁴ "In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party."⁵ When a motion for summary judgment is made and properly supported, the nonmoving party may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine dispute for trial.⁶

In a collection hearing, a taxpayer may raise any issue that is relevant to an unpaid tax or proposed levy, including challenges to the appropriateness of the collection action and offers of collection alternatives.⁷ A taxpayer may challenge the existence or amount of the underlying tax liability if the taxpayer did not

³ Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

⁴ Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

⁵ FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

⁶ Rule 121(d).

⁷ Sec. 6330(c)(2)(A).

previously have the opportunity to dispute it;⁸ however, the taxpayer may not dispute this if they had a prior opportunity.⁹

This Court is a court of limited jurisdiction and our jurisdiction in collection cases is defined by the scope of the determination that the settlement officer is required to make.¹⁰ Here, the underlying liability may not be placed in issue. Ms. Black received a notice of deficiency with respect to her 2012 tax liability in 2014. This notice provided Ms. Black the opportunity to dispute the underlying liability. Because Ms. Black had a prior opportunity to challenge her underlying liability for 2012, she may not challenge it in this proceeding.¹¹

Where the validity of the underlying liability is not properly at issue, we review the Commissioner's determination for abuse of discretion.¹² Ms. Black may prove an abuse of discretion by showing that the Commissioner exercised his discretion arbitrarily, capriciously, or without sound basis in fact or law.¹³

Turning to the Commissioner's determination, the determination by the settlement officer must take three things into consideration: (1) verification that the requirements of the applicable law and administrative procedure have been met, (2) issues raised by the taxpayer, and (3) whether any proposed collection action balances the need for efficient tax collection with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.¹⁴ We take each in turn.

The settlement officer verified that all legal and procedural requirements were met before the filing of the notice of determination.

The settlement officer did not abuse her discretion when considering the issues raised by Ms. Black. Ms. Black had been given a reasonable opportunity to

⁸ Sec. 6330(c)(2)(B).

⁹ Bell v. Commissioner, 126 T.C. 356, 358 (2006).

¹⁰ See sec. 7442; Freije v. Commissioner, 125 T.C. 14, 25 (2005).

¹¹ See Bell v. Commissioner, 126 T.C. at 358; Sec. 301.6320-1(e)(3), Q&A-E-7, *Proced. & Admin. Regs.*; Sec. 301.6330-1(e)(3), Q&A-E7, *Proced. & Admin. Regs.*

¹² Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000).

¹³ See Giamelli v. Commissioner, 129 T.C. 107, 111 (2007).

¹⁴ Secs. 6320(c), 6330(c)(3); Lunsford v. Commissioner, 117 T.C. 183, 184 (2001).

dispute her underlying liability. Once a taxpayer has had this opportunity but has failed to avail themselves of it, the settlement officer may proceed in making a determination by reviewing the case file.¹⁵

The settlement officer did not abuse her discretion in not considering collection alternatives. Ms. Black did not propose a collection alternative or accept one made by the settlement officer. It is not an abuse of discretion for a settlement officer to not consider collection alternatives when the person seeking a collection alternative does not propose one.¹⁶

Finally the settlement officer determined that the levy was no more intrusive than necessary.

Conclusion

There is no genuine dispute as to any material fact with respect to this collection action, and we must render a decision for the Commissioner as a matter of law. Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment, filed November 9, 2017, is granted. It is further

ORDERED AND DECIDED that the Commissioner's Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated July 1, 2016, is sustained.

**(Signed) Ronald L. Buch
Judge**

Entered: **MAR 23 2018**

¹⁵ See Oropeza v. Commissioner, T.C. Memo. 2008-94, aff'd, 402 F. App'x 221 (9th Cir. 2010); Sec. 301.6330-1(d)(2), Q&A-D7, Proced. & Admin. Regs.

¹⁶ Kendricks v. Commissioner, 124 T.C. 69, 79 (2005).