

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

BRIGITTE ODETTE MYHRE,)
)
 Petitioner(s),)
)
 v.) Docket No. 13381-17SL.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER AND DECISION

This collection due process (CDP) case is before the Court on respondent’s Motion for Summary Judgment, filed January 12, 2018, pursuant to Rule 121.¹ The Internal Revenue Service (IRS or respondent)² contends that the Court should affirm the determination of the IRS Office of Appeals (Appeals Office) sustaining a proposed levy to collect petitioner’s unpaid Federal income tax liabilities for 2012 and 2014. Although we directed petitioner to file an objection, she failed to do so.

A. Background

When petitioner failed to file a Federal income tax return for taxable year 2012, respondent prepared a substitute for return (SFR) pursuant to sec. 6020(b). Petitioner filed her Federal income tax return for taxable year 2014 on June 22, 2015, with a balance due. The outstanding balances for 2012 and 2014 were assessed.

¹Rule references are to the Tax Court Rules of Practice and Procedure, and section references are to the Internal Revenue Code, as amended. Monetary amounts are rounded to the nearest dollar.

²The Court uses the term “IRS” to refer to administrative actions taken outside of these proceedings. The Court uses the term “respondent” to refer to the Commissioner of Internal Revenue, who is the head of the IRS and is respondent in this case, and to refer to actions taken in connection with this case.

The IRS issued a Notice LT11, Notice of Intent to Levy (levy notice), dated November 9, 2016. The levy notice advised petitioner of her outstanding balance due totaling \$4,238 for 2012 and 2014 and informed petitioner of her right to a hearing.³ Petitioner timely submitted a Form 12153, Request for Collection Due Process or Equivalent Hearing, on which she checked “Installment Agreement” as the basis for the disputing the levy. Petitioner included a Form 9465, Installment Agreement Request, on which she asserted \$300 as the amount petitioner could pay each month. Petitioner did not dispute the underlying liabilities.

In a letter dated January 18, 2017, the IRS informed petitioner of the receipt of her Form 12153, and on February 8, 2017, petitioner’s Form 12153 was forwarded the IRS Appeals Office. Settlement Officer (SO) Ostos was assigned to petitioner’s case.

On March 7, 2017, SO Ostos issued a letter scheduling a telephonic CDP hearing with petitioner for April 6, 2017, and advised petitioner to call or write within 14 days if the time of the hearing was inconvenient or other hearing accommodations were preferred. The letter included a proposed Form 433-D, Installment Agreement, of \$659 per month, and directed petitioner to complete and return the enclosed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and include supporting documentation for Form 433-A, by March 21, 2017, should she be unable to pay the proposed amount. SO Ostos further explained that, on or before March 28, 2017, petitioner could submit a 2012 Federal income tax return to challenge petitioner’s underlying liability assessed based upon the SFR. Petitioner did not submit a 2012 Federal income tax return nor did she complete and return the Form 433-A.

On April 3, 2017, petitioner faxed a letter to SO Ostos stating that she was unavailable for the CDP hearing scheduled for April 6, 2017, and further that she was unable to pay the \$659 per month proposed in the Form 433-D. Petitioner advised in her letter that she was “in the process of starting a real estate agents career” in which she had yet to receive income for 2017 and made less than \$30,000 in 2016. Petitioner did not include a Form 433-A with her letter. SO Ostos sent petitioner a letter dated April 6, 2017, explaining that his attempts to contact petitioner for the scheduled CDP hearing were unsuccessful, petitioner failed to provide any information as requested and that he would give petitioner

³Petitioner’s unpaid tax liabilities of \$3,705 (\$2,458 + \$1247) and additional interest and penalty charges of \$349 and \$184, respectively, for a total amount due of \$4,238.

another opportunity to submit, on or before April 20, 2017, any information she wanted SO Ostos to consider in his CDP determination. Petitioner responded in a fax to SO Ostos on April 20, 2017, which included petitioner's bank statement for February 24 to March 23, 2017, 2016 Form W-2, Wage and Tax Statement, and Form 1099-MISC, Miscellaneous Income.

On May 11, 2017, the IRS issued a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 (notice of determination) for 2012 and 2014 sustaining the levy. Petitioner timely filed a petition requesting review of the notice of determination, in which she asserted that "[t]he proposed payment plan would create financial hardship and lower payment over more time can be made."

On January 12, 2018, respondent filed concurrently, a motion for summary judgment (respondent's motion) and a declaration of settlement officer Andrew S. Ostos in support of the motion for summary judgment. Respondent's motion and declaration included copies of IRS transcripts for petitioner's 2012, 2014, and 2016 taxable years, which reflect that as of January 3, 2018, petitioner had a balance due on her underlying tax liabilities for taxable years 2012 and 2014, and that petitioner had yet to file a 2016 Federal income tax return. Respondent stated in his motion that petitioner has not returned his telephone calls and he is unaware whether petitioner objects to the motion. By Order dated January 17, 2018, the Court directed petitioner to file an objection, if any, to respondent's motion. As of the date of this Order, nothing has been filed by or on behalf of petitioner.

B. Discussion

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy. Rule 121(a). We may grant summary judgment only if there is no genuine dispute of any material fact. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Respondent, as the moving party, bears the burden of proving that no genuine dispute exists as to any material fact and that respondent is entitled to judgment as a matter of law. See FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000). In deciding whether to grant summary judgment, the factual materials and inferences drawn from them must be considered in the light most favorable to the nonmoving party. See id. However, the nonmoving party is required "to go beyond the pleadings and by * * * [her] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate

‘specific facts showing that there is a genuine issue for trial.’” Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

In rendering an administrative determination in a CDP proceeding under sections 6320 and 6330, the Appeals Office must verify that all applicable laws and administrative procedures were met. Secs. 6320(c), 6330(c)(1). The Appeals Office must also consider any issues raised by the taxpayer, including offers of collection alternatives and challenges to the appropriateness of the collection action. Secs. 6320(c), 6330(c)(2)(A). 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. Secs. 6320(c), 6330(c)(3)(c).

This Court has jurisdiction under section 6330 to review the Commissioner's administrative determinations. Sec. 6330(d). If, as here, the taxpayer’s underlying tax liability is not at issue, we review the Appeals Office’s determination for abuse of discretion.⁴ Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). When the SO gives a taxpayer adequate time to submit requested items, it is not abuse of discretion for the SO to move ahead if the taxpayer fails to submit these items. Pough v. Commissioner, 135 T.C. 344, 351 (2010); Shanley v. Commissioner, T.C. Memo. 2009-17, 2009 WL 195929,*7. It is well settled that the Commissioner is justified in rejecting a proposed collection alternative, such as an Offer-in-Compromise, if the taxpayer fails to submit requested financial information or is not current in Federal tax filing and payment requirements. See Pough v. Commissioner, at 351; Giamelli v. Commissioner, 129 T.C. 107, 111-112 (2007).

There is nothing in the record of this case that suggests an abuse of discretion. SO Ostos initially gave petitioner an opportunity to provide a Form 433-A and a 2012 Federal income tax return. Petitioner did not provide the requested documentation nor did petitioner submit a tax return prior to the CDP hearing. Petitioner did not attend the CDP hearing; however, SO Ostos gave petitioner additional time to submit any information and documentation to aid in the determination of petitioner’s case. SO Ostos provided adequate time for petitioner to provide him with the requested items and to provide tax returns for years which were not compliant with Federal income tax filing obligations. Since

⁴The record reflects and is supported herein that petitioner did not raise the issue of her underlying liabilities at any point, including in petitioner’s Form 12153 or in her petition.

petitioner did not provide the requested documents after being given a reasonable opportunity to provide same, SO Ostos did not abuse his discretion.

The record further shows that SO Ostos properly verified that the requirements of all applicable laws and administrative procedures were met in the processing of petitioner's case and that the collection action balances the Government's need for the efficient collection of taxes with petitioner's concerns that the collection action be no more intrusive than necessary. Therefore, the Appeals Office did not abuse its discretion in this case.

Petitioner is advised that she need not appear at the Court's June 11, 2018, New York, New York trial session because this case will not be called from the calendar given the dispositive action taken by the Court in this Order and Decision.

Upon due consideration and for cause, it is

ORDERED that respondent's Motion for Summary Judgment, filed January 12, 2018, is granted. It is further

ORDERED AND DECIDED that the Notice of Determination Concerning Collection Action(s) under Section(s) 6320 and/or 6330, dated May 11, 2017, upon which this case is based, is sustained.

**(Signed) Peter J. Panuthos
Special Trial Judge**

ENTERED APR 20 2018