

UNITED STATES TAX COURT
WASHINGTON, DC 20217

RENEE L. LOETSCHER,)	
)	CZ
Petitioner(s),)	
)	
v.)	Docket No. 10197-17 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This case was commenced under Internal Revenue Code section 6330 in response to a notice of determination sustaining a Federal tax lien in relation to petitioner’s unpaid Federal income tax liability for 2012. It was called from the calendar in Phoenix, Arizona, on April 30, 2018, for hearing on respondent’s Motion for Summary Judgment filed February 21, 2018. The parties appeared and were heard.

Respondent’s Motion for Summary Judgment, among other things, acknowledged that petitioner had not received the notice of deficiency sent in this case, which was returned undelivered. She was, therefore entitled to dispute her underlying liability. See section 6330(c)(2)(B). However, respondent argued that petitioner had not properly raised the underlying liability, citing applicable authorities as follows:

The merits are not properly raised if the taxpayer challenges the underlying tax liability, but fails to present Appeals with any evidence with respect to that liability after being given a reasonable opportunity to present such evidence. Treas. Reg. § 301.6330-1(f)(2) Q&A-F3. In Norman v. Commissioner, T.C. Memo 2016-98, the settlement officer allowed the taxpayer to dispute his underlying liability because the settlement officer was unable to verify whether the taxpayer actually received the notice of deficiency. The taxpayer’s underlying liability was based on a substitute for return; the settlement officer repeatedly requested the taxpayer to submit an income tax return to challenge the

underlying liability, but the taxpayer refused to do so. Id. at *3. The Court determined that the taxpayer failed to properly raise the underlying liability during the [section 6330(c)] hearing, and thus could not do so during a judicial review of that [section 6330(c)] hearing. Id. Here, like the taxpayer in Norman, [p]etitioner failed to properly raise the underlying liability during the [section 6330(c)] hearing.

Respondent's motion was supported by the Declaration of Charles E. Duff, which authenticated the administrative record in this case. That record reflected petitioner's failure to file Federal income tax returns for multiple years beginning in 2000, her resolution of certain liabilities with the assistance of a prior representative, her termination of that representative and commencement of a series of correspondence that led the Appeals representative, Duff, to warn her about Internal Revenue Code section 6673's provision of a penalty in the event of frivolous arguments. The record also reflects that petitioner originally requested a hearing by correspondence but later demanded a face-to-face hearing. The Appeals officer advised petitioner that filing of delinquent returns and information about the underlying liability for 2012 were a precondition for a face-to-face hearing. Respondent's Motion for Summary Judgment explained:

A [section 6330] hearing may consist of a face-to-face meeting, one or more written or oral communications, or some combination thereof, but a face-to-face hearing is not required. Treas. Reg. § 301.6320-1(d)(2) Q&A-D6. It is not an abuse of discretion to deny a request for a face-to-face hearing when the taxpayer refuses to file pastdue returns, submit financial information, or to present nonfrivolous arguments. Schlegal v. Commissioner, T.C. Memo. 2016-90, at *6; Zastrow v. Commissioner, T.C. Memo. 2010-215, at *3; Toth v. Commissioner, T.C. Memo. 2010-227, at *2. Here, [p]etitioner has not filed an income tax return since at least 2000. Respondent asked [p]etitioner to file her 2012 income tax return, as well as the other past-due returns on several occasions, and [p]etitioner failed to do so. Respondent also requested [p]etitioner to provide financial information to discuss a collection alternative, and [p]etitioner failed to do so. Therefore, SO Duff did not abuse his discretion in denying [p]etitioner's request for a face-to-face hearing.

The Court ordered petitioner to respond to the Motion for Summary Judgment by March 26, 2018. She did not respond by that date or before April 4,

2018, when the Court set the Motion for Summary Judgment for hearing in Phoenix, Arizona on April 30, 2018. In that Order, the Court advised petitioner:

It appears from the amended petition and from the letters attached to the declaration supporting respondent's motion that petitioner is under the erroneous and misguided impression that respondent has the obligation to prove her liability for taxes on a capital gain included in the notice of deficiency that lead to the lien in issue here. Petitioner, however, must present some reason to believe that the determined gain was not hers or was excessive because it should be reduced by her basis in the property sold. Respondent's motion states that petitioner failed to file a return for 2012 and declined to do so when requested by the Appeals representative who conducted the hearing. Thus she did not properly raise the underlying liability even when given the opportunity to do so. Although there may be a dispute as to whether petitioner received the statutory notice, failure properly to raise the underlying liability precludes our consideration of it unless this case is remanded for some other reason.

If petitioner continues to fail to provide a completed tax return and supporting evidence, petitioner will forego her opportunity for a prepayment challenge to the liability determined by respondent. In this case the amount in question, \$466,592 at the time the notice of lien was filed, is substantial. The Court is reluctant to foreclose a reasonable attempt to secure a better resolution on the merits of petitioner's liability. Petitioner is, however, reminded that petitioner has already been warned by the Appeals office that the Court may impose a penalty not in excess of \$25,000 if petitioner maintains frivolous arguments or otherwise indicates that this case is maintained primarily for delay. Her filings and letters so far, viewed in the context of numerous prior similar cases, suggest that her erroneous arguments are misguided by various tax protest theories.

On April 5, 2018, petitioner filed a Motion for Extension of Time to April 6, 2018, to file a Response to Respondent's Motion for Summary Judgment. In that motion, petitioner falsely stated that the Judge had agreed to the extension, although she had not received any such agreement from anyone at the Court. Petitioner did not file a response to the Motion for Summary Judgment by April 6, 2018, or at any other time. Instead, on April 12, 2018, she filed a Motion for Remand repeating her contention that she was entitled to a face-to-face hearing.

She has not contradicted anything in respondent's statement of facts and ignored the legal authorities set forth in respondent's motion.

By Order served April 13, 2018, the Court set petitioner's Motion to Remand for hearing on April 30, 2018. That Order included the following:

On April 12, 2018, petitioner filed a motion to remand requesting a face-to-face hearing. However, petitioner is not entitled to a face-to-face hearing unless and until delinquent tax returns and other information requested by the office of Appeals are provided. As indicated in the Order setting the motion for summary judgment for hearing, petitioner is mistaken in the approach to the liability for income taxes, and respondent's motion for summary judgment will be granted unless petitioner shows a genuine dispute of material fact preventing summary judgment. At the hearing on April 30, 2018, petitioner will also be expected to specifically identify the persons who allegedly agreed to the extension of time for response to the motion for summary judgment.

At the hearing on April 30, 2018, petitioner did not dispute the falsity of the representation in her Motion for Extension of time, describing it as a "mistype". She repeated her contention that she was entitled to a face-to-face hearing, asserting that she did not see anything in section 6320 or 6330 that she had to file a tax return to get a hearing, despite the authorities cited in respondent's motion and the warnings in two Court orders. She acknowledged that she had failed to consult with the volunteer lawyers present and available without charge to consult with unrepresented taxpayers. When the Court made a last attempt to persuade her to abandon the erroneous approach, she responded "I'm sticking to what I said about that".

Petitioner refuses to acknowledge the applicable authorities, which were cited again in respondent's pretrial memorandum filed and served April 16, 2018. The regulations provide that a "CDP hearing may, but is not required to, consist of a face-to-face meeting." Secs. 301.6320-1(d)(2), Q&A-D6, 301.6330-1(d)(2), Q&A-D6, Proced. & Admin. Regs. We have repeatedly held that the IRS is not required to afford a taxpayer a face-to-face hearing and that a hearing conducted by telephone, correspondence, or document review will suffice. See, e.g., Katz v. Commissioner, 115 T.C. 329, 337-338 (2000); Solny v. Commissioner, T.C. Memo. 2018-71; Williamson v. Commissioner, T.C. Memo. 2009-188, 98 T.C.M. (CCH) 110, 112; Stockton v. Commissioner, T.C. Memo. 2009-186, 98 T.C.M.

(CCH) 103, 106. She has refused to take advantage of every opportunity properly to dispute the underlying liability for 2012. She has elected to rely on questionable “resources” rather than the multiple warnings of what the law requires.

Rule 121(d) states in part: “When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of such party’s pleading, but such party’s response * * * must set forth specific facts showing that there is a genuine dispute for trial.”

On the record in this case, there is no genuine dispute as to material facts, and respondent is entitled to judgment as a matter of law.

Upon due consideration and for cause, it is hereby

ORDERED that petitioner’s Motion for Extension of Time filed April 5, 2018, is deemed moot. It is further

ORDERED that petitioner’s Motion for Remand filed April 12, 2018, is denied. It is further

ORDERED that respondent’s Motion for Summary Judgment filed February 21, 2018, is granted. It is

ORDERED AND DECIDED that the notice of determination on which this case is based is sustained.

**(Signed) Mary Ann Cohen
Judge**

ENTERED: **MAY 23 2018**