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

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SAKINAH MUHAMMAD, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent	)	Docket No. 22688-17SL.

ORDER AND DECISION

This matter is before the Court on respondent's Motion for Summary Judgment, filed April 11, 2018. Respondent seeks to sustain a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code dated September 28, 2017, upholding the filing of a Notice of Federal Tax Lien for the taxable years 2010 through 2015.[1]

There are no genuine issues of material fact in this case, and the Court concludes that respondent is entitled to judgment as a matter of law as provided herein.

Petitioner resided in California at the time the petition in this case was filed.

A. Background

The record establishes and/or the parties do not dispute the following.

Petitioner filed Federal income tax returns for the 2010 through 2015 years but failed to pay balances due. Respondent assessed the reported tax liabilities, as well as related statutory additions, and sent to petitioner notices of balance due. Internal Revenue Service (IRS) records further indicate that petitioner and IRS entered into a series of installment agreements between 2011 and 2016. The agreements were all terminated at some point with amounts remaining outstanding.

[1] Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

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Respondent on March 2, 2017, issued to petitioner a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 for 2010 through 2015, reflecting an unpaid balance of $30,788.98. Petitioner thereafter timely submitted a Form 12153, Request for a Collection Due Process or Equivalent Hearing, in which petitioner disputed the lien filing and expressed interest in a collection alternative in the form of an installment agreement and/or offer in compromise. In further explanation of petitioner's position, petitioner wrote on the form: "I am experiencing a serious health condition and humbly request paym[ents]."

Subsequently, a Settlement Officer (SO) of the IRS Office of Appeals sent to petitioner a letter dated June 6, 2017, scheduling a telephone hearing for July 5, 2017, and, to the extent that petitioner wished the SO to consider collection alternatives, requesting financial information including Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, with supporting attachments documenting income, expenses, assets, etc. For an offer in compromise, the letter also asked petitioner to submit a Form 656, Offer in Compromise, along with the requisite fee. The letter generally requested that such items be provided within 14 days, with the exception of tax returns, for which 21 days was allotted.

When the SO attempted to call petitioner on July 5, 2017, for the scheduled telephone conference, petitioner was unavailable. On July 6, 2017, the SO followed with a letter to petitioner memorializing the attempted call. That letter reminded petitioner of the requested materials, none of which had been received, and warned petitioner that if nothing further was heard or submitted within 14 days, a notice of determination would be issued based on existing information in the file. Petitioner subsequently left a voicemail for the SO, requesting a callback, but when the SO tried to do so on July 17, 2017, petitioner could not be reached because the number provided only a message that it was out of service. Petitioner neither called again nor sent any materials for consideration.

At that juncture, the SO through review of files and transcripts had verified that requirements of applicable law and administrative procedure had been met by verifying the timeliness of assessment of amounts in dispute and verifying that appropriate collection notices had been sent to petitioner. The SO balanced the need for efficient collection of taxes with the legitimate concern of petitioner that any collection be no more intrusive than necessary by finding that no alternative collection action would be available or proper at that time given petitioner's declination to challenge the underlying liability and failure to submit financial information that could establish the propriety of an alternative.

On September 28, 2017, respondent issued to petitioners the aforementioned Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code, sustaining the filing of the Notice of Federal Tax Lien.[2]

On October 30, 2017, petitioner filed the petition commencing this case. In that document, petitioner expressed disagreement with the notice of determination as follows: "I am financially unable to pay seeking payment plan". The petition went on to cite health issues that interfered with petitioner's ability. Petitioner also offered an explanation for why the administrative conference had been missed, advising that petitioner's mother had died during the conference period and that petitioner had been on a plane flying back from the funeral in Ohio at the time of the scheduled IRS hearing. Respondent then filed the Motion for Summary Judgment presently before the Court on April 11, 2018. By Order dated April 12, 2018, petitioner was directed to file an objection, if any, to respondent's motion, on or before May 3, 2018. To date, nothing has been received from petitioner.

B. Discussion

1. Summary Judgment

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Florida 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). The Court may grant summary judgment only if there are no genuine disputes or issues of 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 or issue exists as to any material fact and that respondent is entitled to judgment as a matter of law. FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. at 529. 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 non-moving party. FPL Group, Inc. v. Commissioner, 115 T.C. 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529. The party opposing summary judgment must set forth specific facts which show that a question of genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v.

[2] Although the attachment to the notice of determination inaccurately refers to a notice of intent to levy and to sustaining proposed levy action, such statements represent typographical errors, as only lien filing is involved in the underlying administrative proceeding and this litigation.

Catrett, 477 U.S. 317, 324 (1986); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988); King v. Commissioner, 87 T.C. 1213, 1217 (1986); Shepherd v. Commissioner, T.C. Memo. 1997-555. When the moving party has carried its burden, however, the party opposing the summary judgment motion must do more than simply show that "there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The party opposing the motion "may not rest upon the mere allegations or denials of his pleading, but * * * must set forth specific facts showing there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Where the record viewed as a whole could not lead a reasonable trier of fact to find for the non-moving party, there is no "genuine issue for trial". Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. at 587.

Under Rule 121(d), if the adverse party does not respond to the motion for summary judgment, then this Court may enter a decision where appropriate against that party. See King v. Commissioner, 87 T.C. at 1217; Shepherd v. Commissioner, T.C. Memo. 1997-555. Petitioner has not responded to the motion for summary judgment. The Court could grant respondent's motion on that ground alone. However, even if the Court did not rely on that basis, the record in this matter shows that respondent is entitled to summary judgment on the merits of the case.

2. Hearings Under Section 6330

Section 6321 imposes a lien in favor of the United States upon all property and rights to property of a taxpayer where there exists a failure to pay any tax liability after demand for payment. The lien generally arises at the time assessment is made. Sec. 6322. Section 6323, however, provides that such lien shall not be valid against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until the Secretary files a notice of lien with the appropriate public officials. Section 6320 then sets forth procedures applicable to afford protections for taxpayers in lien situations.

Section 6320(a) establishes the requirement that the Secretary notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323. This notice required by section 6320 must be sent not more than 5 business days after the notice of tax lien is filed and must advise the taxpayer of the opportunity for administrative review of the matter in the form of a hearing before the IRS Office of Appeals. Sec. 6320(a). Section 6320(b) and (c) grants a taxpayer who so requests the right to a fair hearing before an impartial Appeals officer, generally to be conducted in accordance with the procedures described in section 6330(c), (d), and (e).

Similarly, section 6331(a) authorizes the Secretary to levy upon property and property rights of a taxpayer liable for taxes who fails to pay those taxes within 10 days after a notice and demand for payment is made. Section 6331(d) provides that the levy authorized in section 6331(a) may be made with respect to "unpaid tax" only if the

Secretary has given written notice to the taxpayer 30 days before the levy. Section 6330(a) requires the Secretary to send a written notice to the taxpayer of the amount of the unpaid tax and of the taxpayer's right to a section 6330 hearing at least 30 days before the levy is begun.

If a section 6320 or 6330 hearing is requested, the hearing is to be conducted by the IRS Office of Appeals, and, at the hearing, the officer conducting the conference must verify that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(b)(1), (c)(1). The taxpayer may raise at the hearing "any relevant issue relating to the unpaid tax or the proposed levy". Sec. 6330(c)(2)(A). The taxpayer may also raise challenges to the existence or amount of the underlying tax liability at a hearing if the taxpayer did not receive a statutory notice of deficiency with respect to the underlying tax liability or did not otherwise have an opportunity to dispute that liability. Sec. 6330(c)(2)(B); see Montgomery v. Commissioner, 122 T.C. 1 (2004).

This Court has jurisdiction under section 6330 to review the Commissioner's administrative determinations. Sec. 6330(d); see Iannone v. Commissioner, 122 T.C. 287, 290 (2004). Where the underlying tax liability is properly at issue, the Court reviews the determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Where the underlying tax liability is not at issue, the Court reviews the determination for abuse of discretion. Id. at 182.

a. Underlying Tax Liability

The record in this proceeding indicates that, throughout the administrative process, petitioner has at no time sought to challenge the underlying tax liabilities for the 2010 through 2015 years. The general rule in this Court is that, on appeal of a collection determination, the Court will limit its review to those issues properly raised during the collection hearing. Giamelli v. Commissioner, 129 T.C. 107, 114-115 (2007); Magana v. Commissioner, 118 T.C. 488, 493 (2002). See also Rule 331(b)(4) (advising that any issue not raised in the petition shall be deemed conceded).

Accordingly, the Court will not consider any adjustment to the amount of the underlying 2010 through 2015 liabilities and will review respondent's determination for abuse of discretion. Goza v. Commissioner, 114 T.C. at 182. Whether an abuse of discretion has occurred depends upon whether the exercise of discretion is without reasonable basis in fact or law. Freije v. Commissioner, 125 T.C. 14, 23 (2005); Ansley-Sheppard-Burgess Co. v. Commissioner, 104 T.C. 367, 371 (1995).

b. Spousal Defenses and Challenges to the Appropriateness of Collection Actions

Similarly, petitioner has not at any time raised spousal defenses or challenges to the appropriateness of collection actions. Thus, the Court does not consider those matters here. See Giamelli v. Commissioner, 129 T.C. at 114-115; Magana v. Commissioner, 118 T.C. 493); see also Rule 331(b)(4).

c. Collection Alternatives

During the collection proceeding and insofar as might concern any collection alternative, petitioner's initial hearing request had indicated interest in an installment agreement and/or offer in compromise. The petition in this case had also noted an inability to pay, which can signal a need for currently not collectible status, and had reiterated that a payment plan was being sought. In contrast, nothing in the record suggests that petitioner has ever raised or requested lien withdrawal.

Both installment agreements and offers in compromise are forms of collection alternatives. As a prerequisite for consideration or approval by the IRS of such types of collection alternatives, or of the administrative relief afforded by currently not collectible status, it is generally incumbent upon the taxpayer to provide requested financial information, for example to permit evaluation of ability to pay. See, e.g., secs. 6159, 7122, I.R.C.; Kindred v. Commissioner, 454 F.3d 688, 697 (7th Cir. 2006); Olsen v. United States, 414 F.3d 144, 151 (1st Cir. 2005); Murphy v. Commissioner, 125 T.C. 301, 315 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Wright v. Commissioner, T.C. Memo. 2012-24. Similarly, IRS guidelines with respect to collection alternatives direct that the taxpayer must be in current compliance with filing and estimated payment obligations. E.g., McLaine v. Commissioner, 138 T.C. 228, 243 (2012); Giamelli v. Commissioner, 129 T.C. at 115-116; Taylor v. Commissioner, T.C. Memo. 2009-27. Moreover, it is not an abuse of discretion for the IRS Office of Appeals to decline to consider an installment agreement or offer in compromise where no specific collection alternative proposal is ever placed before the reviewing officer. See, e.g., Kindred v. Commissioner, 454 F.3d at 696; Kendricks v. Commissioner, 124 T.C. 69, 79 (2005). Stated otherwise, it is the obligation of the taxpayer, not the reviewing officer, to start negotiations regarding a collection alternative by making in the first instance a specific proposal.

Here, the record reflects that petitioner failed during the pendency of the administrative hearing process to submit requested financial materials that could establish qualification for a collection alternative. Conversely, it is clear that the SO provided ample warning, instruction, and opportunity for petitioner to remedy the situation, so as to satisfy the conditions and open the door for alternatives. While petitioner's explanation for missing the conference is both reasonable and sympathetic, the failure

ever to follow up with submitting materials lacks a commensurate justification. Caselaw highlights the lack of abuse in analogous scenarios. See, e.g., Murphy v. Commissioner, 125 T.C. at 315 ("An appeals officer does not abuse her discretion when she fails to take into account information that she requested and that was not provided in a reasonable time."); Dinino v. Commissioner, T.C. Memo. 2009-284 (noting consistency with IRS guidelines stating that, for purposes of good case management, no more than 14 days should be allowed for submission of financial information); Gazi v. Commissioner, T.C. Memo. 2007-342 ("There is no requirement that the Commissioner wait a certain amount of time before making a determination as to a proposed levy."); see also sec. 301.6330-1(e)(3), Q & A–E9, Proced. & Admin. Regs.

In sum then, precedent establishes that it is not an abuse of discretion for the IRS Office of Appeals to reject collection alternatives and sustain proposed collection action on the basis of the failure of taxpayers to submit requested financial information establishing qualification or to achieve current compliance with filing obligations. See, e.g., Giamelli v. Commissioner, 129 T.C. at 115-116; Taylor v. Commissioner, T.C. Memo. 2009-27; Roman v. Commissioner, T.C. Memo. 2004-20.

d. Verification of Procedures

It is well settled that no particular form of verification is required; that no particular document need be provided to taxpayers at a hearing conducted under section 6330; and that Forms 4340, Certificate of Assessments, Payments, and Other Specified Matters, and transcripts of account may be used to satisfy the requirements of section 6330(c)(1). Roberts v. Commissioner, 118 T.C. 365, 371 n.10 (2002), aff'd, 329 F.3d 1224 (11th Cir. 2003); Nestor v. Commissioner, 118 T.C. 162, 166 (2002); Lunsford v. Commissioner, 117 T.C. 183 (2001). The Form 4340, transcripts, and materials that are referenced in and/or attached as exhibits to respondent's motion for summary judgment and accompanying declarations, along with the statements of the officer in the notice of determination, show that required assessment and collection procedures were followed.

The Court concludes that there are no genuine issues of material fact for trial and that respondent's determination to proceed with collection was not an abuse of discretion.

C. Conclusion

Drawing all factual inferences against respondent, the Court concludes that there are no genuine issues of material fact in this case and that respondent is entitled to judgment as a matter of law.

Finally, in reaching the conclusions described herein, the Court has considered all arguments made and, to the extent not mentioned above, finds them to be moot, irrelevant, or without merit.

Premises considered, it is

ORDERED that respondent's Motion for Summary Judgment, filed April 11, 2018, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with collection action for taxable years 2010, 2011, 2012, 2013, 2014, and 2015, as determined in the notice of determination, dated September 28, 2017, upon which this case is based.

(Signed) Peter J. Panuthos
Special Trial Judge

ENTERED: **JUN 22 2018**