UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

GRETCHEN L. JACKSON & GARY B. JACKSON,	)	
Petitioners,	)	
v.	)	Docket No. 16854-17SL.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

ORDER AND DECISION

This is a collection review case, filed pursuant to section 6330(d)(1), that involves a proposed levy.[1] Pending before the Court is respondent's Motion For Summary Judgment, filed December 27, 2017. In his motion, respondent seeks to sustain (1) a Notice Of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated July 5, 2017, that was sent to petitioner Gretchen L. Jackson (hereinafter, Mrs. Jackson) in respect of her outstanding income tax liability for 2010 and (2) a Notice Of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, also dated July 5, 2017, that was sent to petitioners Gretchen L. Jackson and Gary B. Jackson (hereinafter, petitioners) in respect of their outstanding income tax liabilities for 2012 through 2015. A letter dated February 14, 2018, from petitioners objecting to the granting of respondent's motion was filed on February 20, 2018. Most recently, on June 21, 2018, respondent's motion was assigned by the Chief Judge to the undersigned for disposition.

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[1] Unless otherwise indicated, section references are to the Internal Revenue Code, as amended, and in effect at relevant times. Rule references are to the Tax Court Rules of Practice and Procedure. Monetary amounts are rounded to the closest dollar.

SERVED Jul 18 2018

Background

Pursuant to an extension, Mrs. Jackson timely filed an income tax return for 2010. On her return Mrs. Jackson reported a tax liability and a balance due, but she did not remit any payment with her return.

Also pursuant to extensions, petitioners timely filed income tax returns for 2012 through 2015. On each of their returns petitioners reported a tax liability and a balance due, but they did not remit any payment with any of their returns.

The unpaid liabilities incurred by Mrs. Jackson and by petitioners arose because of (1) the underwithholding of income tax from their wages and (2) the failure to pay estimated tax, as shown in the following table:

Tax year	Tax liability reported on return	Withheld tax	Estimated tax paid
2010	$1,809	$ 494	$0
2012	7,289	156	0
2013	9,714	328	0
2014	6,494	0	0
2015	12,531	2,419	0

Respondent assessed the tax reported by Mrs. Jackson and by petitioners on each of their returns, together with an addition to tax ("penalty") under section 6651(a)(2) for failure to pay, an addition to tax under section 6654(a) for failure to pay estimated tax (except for 2010), and statutory interest under section 6601(a). Immediately following each such assessment respondent sent a statutory notice of balance due, i.e., notice and demand for payment, pursuant to section 6303(a). No payment by either Mrs. Jackson (for 2010) or by petitioners (for 2012 through 2015) followed. Accordingly, on January 26, 2017, respondent sent to Mrs. Jackson (for 2010) and to petitioners (for 2012 through 2015) a Notice Of Intent To Levy And Notice Of Your Right To A Hearing (final notice).[2] The final notice for 2010 reflected an amount due of $934 (exclusive of further accruals of penalty

[2] For 2013 the final notice reflected not only petitioners' unpaid liability from their return as filed but also an additional amount that was assessed in August 2016 (and for which a statutory notice of balance due was sent immediately following the assessment).

and interest), and the final notice for 2012 through 2015 reflected an aggregate amount due of $45,387 (exclusive of further accruals of penalty and interest).[3]

Petitioners responded to the final notices for 2010 and for 2012 through 2015 by filing with respondent Form 12153, Request For A Collection Due Process Or Equivalent Hearing. On their Form 12153 petitioners requested a collection alternative by checking the boxes for "Installment Agreement", "Offer In Compromise", and "I Cannot Pay Balance". However, throughout the administrative process the only collection alternative that was actually discussed and considered was an installment agreement. Further, on their Form 12153 petitioners did not, nor have they at any time since such form was filed, challenged the existence or amount of their underlying tax liability for any of the five years in issue.

Petitioners' Form 12153 was sent to respondent's Appeals Office in Fresno, California, and the case was assigned to Settlement Officer Daisy Saldana (hereinafter, either the settlement officer or the SO). Given petitioners' interest in a collection alternative, the settlement officer advised petitioners by letters dated April 27, 2017, that they must complete Form 433-A, Collection Information Statement, and accompany it with certain documentation. The settlement officer also scheduled a telephone conference for May 30, 2017.

In a series of faxes on May 26, 2017, petitioners' representative sent the settlement officer both a completed Form 433-A and documentation regarding petitioners' financial situation. A few days later the representative participated in the scheduled telephone conference with the settlement officer.

Throughout the administrative process the parties focused solely on an installment agreement as the collection alternative desired by petitioners, with their representative offering a partial payment installment agreement of $300 per month. The settlement officer explained that such amount "would not full pay the [outstanding] balance within the time provided by law", determined that petitioners had the financial resources to pay a greater monthly amount, and noted that the minimum monthly amount needed to full pay the outstanding balance over 6 years

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[3] The record suggests that petitioners' also have an open account for 2016, but if they do the amount owed is not disclosed in the record. In any event, the January 26, 2017 final notice would not have included any such liability as petitioners' 2016 return was not yet due nor presumably filed.

(72 months) was $1,221.[4] Nevertheless the settlement officer indicated that she could accept a lesser monthly amount and proposed an "expanded" installment agreement of $1,100 per month starting July 28, 2017. Petitioners demurred, but they did not counter the SO's proposal by increasing or otherwise modifying their offer. The matter went no further, and on July 5, 2017, respondent's Appeals Office issued the notices of determination, prompting petitioners to file the petition that commenced this case.

The parties were unable to reach accord on an installment agreement notwithstanding the fact that there was no disagreement (1) that petitioners' monthly income exceeded their monthly expenses and (2) on the amount of petitioner's monthly income. Rather, the snag was the parties' disagreement over the allowable amount of petitioners' monthly expenses. Among the principal areas of disagreement was the monthly amount for housing and utilities. Petitioners argued that the appropriate amount was $2,532, which included $740 for telephone and television. In contrast, the settlement officer, who found the $740 amount to be unreasonable, utilized national standards applicable to petitioners' family size and county of residence and allowed $1,478, an amount that exceeded petitioners' monthly mortgage payment. Another principal area of disagreement was the amount for non-governmental retirement contributions. Petitioners argued that the appropriate amount was $629. In contrast, the settlement officer made no allowance for retirement contributions, which she found to be voluntary.

Discussion

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 on 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. FAL Group, Inc. v. Commissioner, 115

[4] See IRM 5.14.1.4.1(1) (Jan. 1, 2016), regarding the Commissioner's 6-year payment rule, applicable when a taxpayer is unable to full pay immediately and does not qualify for a streamlined installment agreement.

T.C. 554, 559 (2000). 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. FAL Group, Inc. v. Commissioner, 115 T.C. at 559. 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. Catrett, 477 U.S. 317, 324 (1986).

Section 6331(a) authorizes the Secretary to levy on property and rights to property of a taxpayer liable for taxes who fails to pay those taxes within 10 days after 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 an administrative hearing at least 30 days before the levy is begun.

The administrative hearing under section 6330 is conducted by respondent's Appeals Office, which is charged with verifying that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(c)(1), (3)(A). The taxpayer may raise at the hearing "any relevant issue relating to the unpaid tax or the proposed levy". Sec. 6330(c)(2)(A), (3)(B). The taxpayer may also raise challenges to the existence or amount of the underlying tax liability at the 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). The Appeals Office must also balance the need for efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. Sec. 6330(c)(3)(C).

This Court has jurisdiction under section 6330 to review the Commissioner's administrative determinations. Sec. 6330(d)(1). 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, as is the case here, the Court reviews the 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).

Section 6159 authorizes the Commissioner to enter into written agreements allowing taxpayers to pay tax in installment payments if the Commissioner deems that the "agreement will facilitate full or partial collection of such liability." In general, the decision to accept or reject an installment agreement lies within the discretion of the Commissioner."[5] See Thompson v. Commissioner, 140 T.C. 173, 179 (2013); sec. 6159-1(a), (b)(1), (c)(1)(i), Proced. & Admin. Regs. Therefore, in reviewing the decision of the Commissioner's Appeals Office not to accept an installment agreement, "the Court does not substitute its judgment for that of the Appeals Office and decide whether in its opinion the taxpayer's installment agreement should have been accepted." Sulphur Manor, Inc. v. Commissioner, T.C. Memo. 2017-95, at *9-10. Accord, Pisetzner v. Commissioner, T.C. Memo. 2012-64, at *2 ("We do not substitute our judgment for that of the Appeals Office".). Stated otherwise, "[i]f the settlement officer followed all statutory and administrative guidelines and provided a reasoned, balanced decision, the Court will not reweigh the equities." Thompson v. Commissioner, 140 T.C. at 179.

With the foregoing principles in mind, the Court holds that the settlement officer's decision not to accept petitioners' offer of a partial payment installment agreement of $300 per month was not an abuse of discretion.[6] Informing the Court's holding are the following: Right from the start of the administrative process petitioners candidly admitted that their monthly income exceeded their monthly expenses. But petitioners minimized such positive difference in amount by including in their computation of expenses $740 for telephone and television and $629 for non-governmental retirement contributions. Following administrative guidelines the settlement officer determined that voluntary retirement contributions are not a necessary expense, see IRM 5.15.1.27(2) (Nov. 17, 2014), and that a partial payment installment agreement contemplates only necessary expenses, see IRM 5.14.2.1.1(4) (Sept. 19, 2014) ("Contributions to voluntary retirement plans are not a necessary expense."). Further, the record provides no basis for the Court to substitute its judgment for that of the settlement officer that $740 per month for

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[5] An exception is provided in sec. 6159(c), which obligates the Commissioner to accept full payment installment agreements under certain circumstances. Petitioners do not satisfy the requirements of such section for any number of reasons, including the fact that petitioners sought only a partial payment installment agreement.

[6] The Court need not, and does not, decide whether the settlement officer's proposal that petitioners pay $1,100 per month was appropriate or reasonable.

telephone and television was unreasonable.[7] Thus, the positive difference in amount between petitioners' monthly income and their monthly expenses far exceeded the $300 that petitioners' offered for a partial payment installment agreement.[8] And, it must be recalled that after the settlement officer proposed an installment agreement of $1,100 per month starting in July 2017, petitioners did not counter the SO's proposal by increasing or otherwise modifying their offer. Thus, by simply demurring, petitioners framed the issue for decision by the Court as whether the settlement officer, in declining to accept their offer of a partial payment installment agreement in the monthly amount of $300, abused her discretion by acting without a reasonable basis in fact or law. As discussed, the Court holds that the SO did not.

Finally, the Court is satisfied that the Appeals Office properly verified that the requirements of all applicable laws and administrative procedures have been met and balanced the need for efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. In sum, the Appeals Office did not abuse its discretion in this case.

Premises considered, it is hereby

ORDERED that respondent's Motion For Summary Judgment, filed December 27, 2017, is granted. It is further

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[7] Admittedly the settlement officer made no separate allowance for telephone and television. However, she did utilize national standards applicable to petitioners' family size and county of residence to make an allowance for housing and utilities, the amount of which allowance exceeded petitioners' monthly mortgage payment, thereby leaving "headroom" for utilities. But even if some additional amount were properly allowable for telephone and television, the record provides no basis for the Court to conclude that the amount claimed by petitioners was other than as determined by the settlement officer, i.e., unreasonable.

[8] This being the case, the Court finds it unnecessary to consider the other areas of disagreement between the parties regarding petitioners' monthly expenses.

ORDERED AND DECIDED that respondent may proceed with the proposed collection action (levy) in respect of (1) petitioner Gretchen L. Jackson's outstanding income tax liability for the taxable (calendar) year 2010 and (2) petitioners' outstanding income tax liabilities for the taxable (calendar) years 2012 through 2015, as determined by respondent's Fresno, California Appeals Office in its two notices of determination dated July 5, 2017, upon which notices this case is based.

(Signed) Robert N. Armen
Special Trial Judge

Entered: **JUL 18 2018**