

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MICHAEL EDWARD KELLY,)	
)	
Petitioner,)	
)	
v.)	Docket No. 26941-17SL.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER

This is a collection review case, filed pursuant to sections 6320(c) and 6330(d)(1), that involves the filing of a notice of Federal tax lien in respect of petitioner’s outstanding income tax liability for the taxable (calendar) year 2014.¹ Pending before the Court is respondent’s Motion For Summary Judgment, filed July 26, 2018. On that same date respondent also filed the Declaration Of Supervisory Appeals Officer Raymond V. Drilleau in support of his motion. On August 23, 2018, petitioner filed a both a Response and a Declaration, objecting to the granting of respondent’s motion.

As indicated, the matter before the Court at this time is respondent’s Motion For Summary Judgment. The law is clear that 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 Grp., 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; see Rule 121. In deciding whether to grant summary judgment, the factual materials and the

¹ All section references are to the Internal Revenue Code, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

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inferences drawn from them must be considered in the light most favorable to the nonmoving party. FPL Grp., Inc. v. Commissioner, 115 T.C. at 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529.

Petitioner responded to a Notice Of Federal Tax Lien Filing And Your Right To A Hearing Under IRC 6320 dated April 11, 2017, by filing with respondent a Form 12153, Request For A Collection Due Process Or Equivalent Hearing. On the line for collection alternative on the Form 12153 petitioner did not check either of the boxes for “Installment Agreement” or “Offer in Compromise”, but he did check the box for “I Cannot Pay Balance”, which is tantamount to asking that his account be placed in currently-not-collectible status.²

As a prerequisite for consideration or approval by the IRS of administrative relief afforded by currently-not-collectible status, or of a more common collection alternative such as an installment agreement or offer-in-compromise, it is generally incumbent on the taxpayer to provide requested financial information in order to permit evaluation of ability to pay. See, e.g., secs. 6159, 7122; 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, *3. In the present case, the case activity record of the now-retired settlement officer states that documents requested by him were never received and that petitioner never responded to the settlement officer’s letters other than in a single voice-mail message saying that he had unintentionally missed the administrative hearing and would like the settlement officer to call him back. In sharp contrast, petitioner passionately describes in his August 23, 2018 Response and Declaration a very different scenario, alleging repeated efforts to contact IRS personnel and the furnishing of pertinent documentation. How responsive petitioner was to the settlement officer’s request for documentation and other information is a material

² The placing of an account in currently-not-collectible status does not mean that the underlying tax liability is forgiven and need not be repaid if the taxpayer’s financial circumstances should change in the future. Nor does currently-not-collectible status mean that the Federal tax lien is necessarily withdrawn from the public record. This is because a lien is a security device that assures the Government of its priority over other possible creditors. Elliott, Federal Tax Collections, Liens, and Levies, par. 9.05 (2d ed. 2005). Unlike a levy, a lien does not deprive a taxpayer of property. *Id.*; see also United States v. Whiting Pools, Inc., 462 U.S. 198, 210-211 (1983).

fact, and the parties' radically different views constitutes a genuine dispute or issue regarding that fact. Accordingly, the Court is obliged to deny respondent's Motion For Summary Judgment.

As petitioner points out in his August 23, 2018 Response, this case is on the Court's docket for the trial session beginning on September 24, 2018, in Chicago, Illinois. Rather than let this case proceed to trial at that time and place, the parties might care to consider whether it would be mutually advantageous if this case were to be remanded by the Court to respondent's Appeals Office for a supplemental administrative hearing to be conducted by a settlement officer in an office proximate to petitioner's residence in Aurora, Illinois, in order to consider petitioner's request for a collection alternative. After all, if this case were to be tried, and if the Court were to conclude that petitioner strove, but to no avail, to communicate with the settlement officer during the administrative process and to provide requested documentation, then the remedy might very well be a remand for a supplemental administrative hearing. Given that the original settlement officer is now retired and may therefore not be readily available to respondent as a witness at a trial, and further given the fact that the present case involves a lien and not a levy, thereby assuring the Government of its priority over other possible creditors, the filing of a motion to remand, coupled with a motion for continuance of trial from the September 24, 2018 Chicago, Illinois session, would appear to present little (if any) downside to respondent and might very well lead to the disposition of this case on a basis that is mutually agreeable to the parties.

Premises considered, it is hereby

ORDERED that respondent's Motion For Summary Judgment, filed July 26, 2018, is denied.

(Signed) Robert N. Armen
Special Trial Judge

Dated: Washington, D.C.
August 29, 2018