

UNITED STATES TAX COURT
WASHINGTON, DC 20217

TODD M. SKLAR & KAREN R. SKLAR,)	
)	
Petitioners,)	
)	
v.)	Docket No. 19506-17 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This is a “collection due process” (“CDP”) case, brought under I.R.C. section 6330. Petitioners Todd M. Sklar and Karen R. Sklar, invoking our jurisdiction under section 6330(d)(1), seek review of a determination by the Office of Appeals of the Internal Revenue Service (“IRS”) that sustains the filing of a notice of lien to collect their unpaid income tax for the six years 2008, 2009, 2010, 2011, 2012, and 2014. Respondent, the Commissioner of the IRS, filed a motion for summary judgment on July 27, 2018; and Mr. and Ms. Sklar failed to file a response. We will grant the motion.

Background

The Commissioner’s motion sets out and supports the following facts, which the Sklars have not disputed:

For the six years at issue, the Sklars filed Federal income tax returns but did not fully pay the tax that they had reported. For each of the six years, the IRS assessed the tax that the Sklars had reported, plus additions to tax for failure to timely file returns and for failure to fully pay the liabilities. On January 24, 2017, the IRS issued to the Sklars via certified mail a “Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320” (the “Lien Notice”), notifying the Sklars that the Commissioner had filed against them a Notice of Federal Tax Lien pertaining to their tax liabilities for the six years.

The Sklars timely requested a collection due process hearing before the IRS Office of Appeals by sending the IRS a “Request for a Collection Due Process Hearing” (Form 12153), which the IRS received on February 14, 2017. On the Form 12153 the Sklars requested an “Offer-in-Compromise” as a collection alternative and stated that they were unable to pay the liabilities, which statement the IRS reasonably construed as a request to be put into “Currently Not Collectible” (“CNC”) status.

IRS Appeals thereafter communicated with the Sklars by mail and by telephone, making multiple requests for documentation of the Sklars’ financial situation. The Sklars never sent such documentation. Eventually Appeals issued on August 14, 2017, a “Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330”, sustaining the lien filing for the six years at issue.

On September 13, 2017, the Sklars mailed to this Court a letter that the Court treated as a timely petition. On December 26, 2017, the Sklars filed an amended petition that stated that they were “looking for a freeze of the taxes” and “would like to reduce the total amount of the taxes and interest” and that described their difficult financial situation.

On July 27, 2018, the Commissioner moved for summary judgment (Doc. 9); and by order dated July 30, 2018 (Doc. 11), the Court ordered the Sklars to file a response to the IRS's motion no later than August 27, 2018. In that order the Court explained some of the requirements for opposing summary judgment and stated:

If petitioners disagree with the facts set out in paragraphs 5-48 of the IRS’s motion, then their response should point out the specific facts in dispute. **Their response should state, by number, any assertion with which they disagree, should explain the reason for their disagreement, and should cite whatever evidence supports their position.** If petitioners disagree with the IRS’s argument as to the law (in paragraphs 49-83), then their response should also set out their position on the disputed legal issues. Q&As that the Court has prepared on the subject “What is a motion for summary judgment? How should I respond to one?” are available at the Court’s website and are printed on the page attached to this order.

Petitioners should note that, under Tax Court Rule 121(d), if they do not respond to the motion for summary judgment, then a decision may be entered against them.

The Sklars have not responded.

Discussion

On its face the Commissioner's motion is well founded; its factual assertions are undisputed, and its legal arguments are sound. For each of the years at issue, the Sklars reported their tax liability, which the IRS assessed, and which the Sklars have not disputed.

The Sklars expressed an interest in two potential collection alternatives--an Offer-in-Compromise and CNC status--but they declined multiple requests for documentation to substantiate their entitlement to such alternatives. We have often held that it is not an abuse of discretion for Appeals to reject a collection alternative where the taxpayer failed to submit requested financial information, Tucker v. Commissioner, T.C. Memo. 2014-103; Huntress v. Commissioner, T.C. Memo. 2009-161. The IRS is charged with the duty to collect taxes; and when a taxpayer fails to pay his taxes after notice and demand, the IRS is authorized to file notices of lien to protect the Government's rights as a creditor. The CDP process creates an opportunity for a taxpayer to request the agency's forbearance, and IRS procedures are reasonably constructed to assure that such forbearance is granted only where it is justified. Appeals did not abuse its discretion in denying a collection alternative in the absence of the financial information that it had requested.

Conclusion

For the foregoing reasons, and for the reasons stated in the IRS's motion, it is

ORDERED that respondent's motion for summary judgment filed July 27, 2018, is granted, both on its merits and, in the alternative, on the ground that the Sklars failed to comply with the Court's order that they respond to the motion (see Rule 121(d); see also Rule 123(b)). It is further

ORDERED AND DECIDED that respondent may proceed with the collection of petitioner's Federal income tax for the six years 2008, 2009, 2010, 2011, 2012, and 2014 as described in the "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330" dated August 14, 2017, sustaining the lien filing for the six years at issue.

(Signed) David Gustafson
Judge

ENTERED: **SEP 14 2018**