

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

KAZUHIRO KONO,)
)
Petitioner,)
)
v.) Docket No. 18347-17 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER AND DECISION

This collection review case is before the Court on respondent’s Motion for Summary Judgment, supported by declarations by Settlement Officer Regina R. Gillenwater (SO Gillenwater) and respondent’s counsel Kevin R. Oveisi, filed pursuant to Rule 121.¹ Although the Court directed petitioner to file a response to respondent’s motion, he failed to do so.² On October 1, 2018, the case was called for hearing at the Court’s Los Angeles, California Trial Session. There was no appearance by or on behalf of petitioner. Respondent appeared and was heard. As discussed in detail below, we will grant respondent’s motion.

Background

Petitioner failed to file a Federal income tax return for 2009. In 2013 the Internal Revenue Service (IRS) prepared a substitute for return (SFR) for 2009 under section 6020(b) and mailed to petitioner a notice of deficiency. In February 2014 petitioner filed an amended return for 2009, which, after processing by the IRS, did not result in any change of the amount of tax due from that shown on the

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

²By failing to respond to respondent’s motion, petitioner has waived his right to contest it. Rule 121(d); see, e.g., Lunsford v. Commissioner, 117 T.C. 183, 187 (2001).

SFR. Petitioner did not file a petition for redetermination with the Court challenging the notice of deficiency, and respondent assessed the tax and additions to tax determined in the notice of deficiency, along with interest, and sent to petitioner a notice of balance due. Petitioner did not remit payment.

In February 2017 respondent issued to petitioner a Notice CP90, Intent to seize assets and notice of right to a hearing regarding his unpaid taxes for 2009-- then aggregating \$28,332.14. Petitioner timely submitted to the IRS Office of Appeals (Appeals Office) a Form 12153, Request for a CDP or Equivalent Hearing, in which he disputed the proposed levy action and expressed interest in a collection alternative in the form of an “installment agreement”. He also selected the box for “I cannot pay the balance” and indicated that a levy would cause him financial hardship.

SO Gillenwater sent a letter to petitioner scheduling a telephone hearing for June 20, 2017. The letter explained that this was petitioner’s opportunity to discuss alternatives to the collection action. The letter also stated that petitioner had not filed his 2014 tax return which was needed along with a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, in order to consider collection alternatives. Petitioner did not submit the requested documents, and he did not call in for the June 20, 2017, telephone hearing. On June 22, 2017, SO Gillenwater sent petitioner a letter giving him a second opportunity to provide the requested documents. Again, petitioner did not respond.

In August 2018 the Appeals Office issued to petitioner a notice of determination concerning collection actions under section 6320 and/or 6330 (notice of determination) sustaining the collection action for 2009. Petitioner invoked the Court’s jurisdiction by filing a timely petition for review of the notice of determination. Petitioner states in the petition that he is “fighting against wrong charges of the tax in 2009”.

Discussion

Summary judgment serves to “expedite litigation and avoid unnecessary and expensive trials.” Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy “if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with affidavits or declarations, if any, show that there is no genuine dispute as to any material fact

and that a decision may be rendered as a matter of law.” Rule 121(a) and (b). Respondent’s motion is well founded based on the averments therein and the declarations and exhibits attached thereto. We conclude that there is no dispute as to a material fact and that respondent is entitled to judgment as a matter of law sustaining the notice of determination upon which this case is based.

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 that the written notice include the amount of the unpaid tax and the taxpayer’s right to an administrative hearing.

The Appeals Office is charged with conducting collection review proceedings under section 6330 and must verify that the requirements of any applicable law and administrative procedure have been met in processing the taxpayer’s case. Sec. 6330(c)(1), (3)(A). The Appeals Office must also consider any issues raised by the taxpayer, including offers of collection alternatives, appropriate spousal defenses, and challenges to the appropriateness of the collection action. Sec. 6330(c)(2)(A), (3)(B). A taxpayer may challenge the existence or amount of his underlying tax liability if he did not receive a notice of deficiency or did not otherwise have an opportunity to dispute such liability. Sec. 6330(c)(2)(B). Finally, the Appeals Office must consider whether the collection action balances the need for efficient collection against the taxpayer’s concern that collection by no more intrusive than necessary. Sec. 6330(c)(3)(C).

Section 6330(d)(1) grants this Court jurisdiction to review the administrative determination by the Appeals Office. If the taxpayer’s underlying tax liability is not in dispute, as is the case here, we review respondent’s determination for abuse of discretion. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000).³ An abuse of discretion occurs if the Appeals Office exercises its discretion “arbitrarily, capriciously, or without sound basis in fact or law.” Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

³The income tax that respondent seeks to collect for 2009 was the subject of an earlier notice of deficiency. Because petitioner has not suggested at any stage of these proceedings that he did not receive the notice of deficiency, he may not challenge his underlying tax liability in this case. Sec. 6330(c)(2)(B).

The Appeals Office properly verified that the requirements of all applicable laws and administrative procedures were met in processing petitioner's case, see sec. 6330(c)(1), and that the proposed levy action balances the Government's need for the efficient collection of taxes with petitioner's concerns that the collection action be no more intrusive than necessary, see sec. 6330(c)(3). Petitioner failed to submit required documents and he failed to cooperate with the Appeals Office during the course of the administrative review process. On this record, it follows that the Appeals Office did not abuse its discretion in sustaining the proposed levy action.

Upon due consideration and for cause, it is

ORDERED that respondent's motion for summary judgment, filed December 8, 2017, is granted. It is further

ORDERED AND DECIDED that respondent's notice of determination concerning collection action(s) under section 6320 and/or 6330, dated August 18, 2018, upon which this case is based, is sustained.

**(Signed) Daniel A. Guy, Jr.
Special Trial Judge**

ENTERED: **NOV 01 2018**