

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

JAMES L. MCCARTHY,)
)
 Petitioner(s),)
)
 v.) Docket No. 21940-15 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

This collection due process case requires that we decide whether respondent's Appeals Office (Appeals) abused its discretion in rejecting petitioner's proposed offer-in-compromise and a partial payment installment agreement. In a supplemental notice of determination (notice) issued in January 2018, Appeals justified its rejection of petitioner's proposals on two separate grounds. First, petitioner's proposals did not take into account the value of properties held by a trust that Appeals determined to be petitioner's nominee. Second, Appeals determined that petitioner's failure to provide updated financial information upon request precluded it from considering either collection alternative.

Petitioner initially provided Appeals with financial information in early 2015. In March 2017, following our trial of the case the previous January, we granted respondent's motion to remand the case to Appeals. The notice states that, in August 2017, apparently in response to a request for updated financial information from the Settlement Officer (SO) Renee Meskill, petitioner's attorney "stated that if Appeals was going to maintain its decision regarding nominee ownership, there was no point in providing updated financial information."

Section 7122(a)¹ gives the Commissioner the discretion to compromise unpaid tax liabilities. Section 301.7122-1(b)(2), *Proced. & Admin. Regs.*, lists

¹All section references are to the Internal Revenue Code of 1986, as amended.

doubt as to collectibility as a valid ground for compromising an unpaid tax liability. "Doubt as to collectibility exists in any case where the taxpayer's assets and income are less than the full amount of the liability." Id. Outdated financial information does not allow for an accurate assessment of the collectibility of a taxpayer's liability. Therefore, the Internal Revenue Manual (IRM) provides that financial information submitted by a taxpayer in support of a proposed collection alternative should be "no older than the prior six months" and mandates that information older than 12 months be updated. IRM pt. 5.15.1.1(4) (Nov. 17, 2014); see also id., pt. 5.15.1.2(3) (Aug. 29, 2018).

As we explained in Martinez v. Commissioner, T.C. Memo. 2017-47, at *9, "We have consistently held that it is not an abuse of discretion for an Appeals officer to reject collection alternatives and sustain the proposed collection action where the taxpayer has failed, after being given sufficient opportunities, to supply the SO with the required forms and supporting financial information." Therefore, petitioner's refusal to submit updated financial information may provide an independent basis for upholding Appeals' determination in the present case, regardless of petitioner's interest in the trust's assets--unless, perhaps, petitioner's refusal was justified because he or his counsel were given reason to believe that Appeals had resolved to adhere to its position on the nominee issue after remand so that the provision of updated financial information would be futile.

The parties' briefs do not address the potential impact on our disposition of the case of petitioner's refusal to provide updated financial information. Respondent's briefs focus on whether SO Meskill was correct in her conclusion that the value of the trust's assets had to be considered in evaluating petitioner's proposed collection alternatives. Respondent does not advance petitioner's failure to provide updated financial information as an independent ground for upholding Appeals' rejection of petitioner's proposed collection alternatives. And petitioner's briefs offer no justification for his failure to submit updated financial information. In particular, they do not describe any communications received from SO Meskill or other Appeals representatives that might have supported an inference that the provision of updated financial information would be futile. Because the parties' briefs are insufficient to allow us to determine the impact of petitioner's failure to provide SO Meskill with updated financial information, we will require further submissions. With this Order, we require petitioner to explain that failure. If appropriate, after receiving petitioner's explanation, we will give respondent the opportunity to respond to it.

On the premises stated, it is

ORDERED that petitioner shall, on or before January 4, 2019, provide the Court with a written explanation, accompanied by supporting affidavit(s), for his failure to provide SO Meskill with updated financial information after our remand of the case, including descriptions of any communications received from SO Meskill or other representatives of respondent's Appeals office indicating that the provision of updated financial information would be futile.

**(Signed) James S. Halpern
Judge**

Dated: Washington, D.C.
December 10, 2018