

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

DOUGLAS MAITLAND REID)
& LINDA MARIE REID,)
)
 Petitioners,)
)
 v.) Docket No. 12152-17L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER AND DECISION

This is a collection review case involving a proposed levy to collect petitioners' outstanding Federal income tax liability for the taxable (calendar) year 2014. Pending before the Court is respondent's Motion For Summary Judgment, filed September 27, 2018, and supplemented December 4, 2018 and December 18, 2018. Petitioners filed a Response on October 30, 2018, objecting to the granting of respondent's motion.

On May 30, 2017, petitioners, while residing in the State of Connecticut, filed their petition with the Court.

I. Background

A. Petitioners

Petitioner Douglas Maitland Reed is a self-employed financial consultant, and petitioner Linda Marie Reed is a physician.

B. Petitioners' Tax Liability for 2014

Pursuant to an extension of time to file, petitioners timely filed a Federal income tax return for 2014. On their return petitioners reported a tax liability of \$70,018. Against that amount petitioner claimed withholding of \$24,148, but

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because they had made no payments of estimated tax, petitioners were left with an unpaid balance of tax in the amount of \$45,870.

In due course respondent assessed the tax reported by petitioners on their return, together with additions to tax (“penalties”) for failure to timely pay under section 6651(a)(2) and for failure to pay estimated tax under section 6654(a), as well as statutory interest under section 6601(a).¹ Concurrent therewith respondent sent petitioners a notice and demand for payment (“statutory notice of balance due”). See sec. 6303(a). Petitioners did not pay the outstanding balance.

On November 16, 2016, respondent sent petitioners a Notice Of Intent To Levy for the taxable years 2012, 2013, and 2014. Petitioners responded by filing with respondent a Form 12153, Request For A Collection Due Process Or Equivalent Hearing, for the 2012, 2013, 2014, and 2015 taxable years. On the form petitioners indicated that they were interested in a collection alternative, checking the boxes for “Installment Agreement”, “Offer in Compromise”, and “I Cannot Pay Balance”, and writing “[w]e are in the process of completing Form 433-A [Collection Information Statement] and will send when complete.” In their Form 12153 petitioners did not seek to challenge either the existence or amount of their underlying liability, nor did they seek to do so subsequently, either during the administrative proceeding or during the instant judicial proceeding.

By letter dated March 21, 2017, respondent’s Appeals Settlement Officer (ASO) contacted petitioners about their request for an administrative (i.e., so-called CDP, or Collection Due Process, hearing) hearing for the taxable year 2014.² The letter included the following paragraphs:

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

² The request for an administrative hearing relating to the 2012 and 2013 taxable years was determined to be untimely because of the issuance of an earlier levy notice, and the request relating to 2015 was considered to be premature because a levy notice had not yet been issued.

For me to consider alternative collection methods such as an installment agreement or offer in compromise, you must provide any items listed below. *In addition, you must have filed all federal tax returns required to be filed and be up to date with your estimated tax payments or withholding.*

Please submit the following:

1) A completed page 4, expense table from the Collection Information Statement (Form 433-A). *The form you submitted was not complete.* * * *

* * * * *

3) Proof of sufficient withholding or sufficient estimated tax payments for tax year 2016 and year to date 2017.

(Emphasis and italics in the original.)

Pursuant to the ASO's request, petitioners furnished a completed, page 4 expense table from the Collection Information Statement (Form 433-A), which page they signed and dated April 17, 2017. The table showed total monthly income of \$25,317 and total monthly living expenses of \$17,116, for a net difference of \$8,100.³

At petitioners' scheduled telephonic administrative hearing on April 20, 2017, the ASO proposed an installment agreement of \$12,815 per month (based on IRS national allowable standards), which petitioners rejected on the ground that it was beyond their means. The ASO then countered with an installment agreement of \$8,100 per month based on the aforementioned table that petitioners had submitted. Again, petitioners rejected the proposal for the same reason and also indicated that they might consider filing an offer-in-compromise. However, petitioners never submitted Form 656 ("Offer in Compromise") during the administrative stage of this case, nor did they provide any further information or documents to the ASO after the April 20, 2017 conference.

On May 1, 2017, respondent's Appeals Office sent petitioners a Notice Of Determination Concerning Collection Action(s) (hereinafter, notice of

³ The discrepancy of \$101 between total monthly income and total monthly living expenses is attributable to rounding (\$1) and to petitioners' apparent arithmetic mistake (\$100).

determination) sustaining the proposed levy. In response to the notice of determination petitioners timely filed a petition commencing the instant case on May 30, 2017. In their petition, petitioners allege, inter alia, that “[t]he proposal(s) made by the [Appeals] Settlement Officer would compound the financial hardship that we are experiencing” and that “[a]s discussed with the [Appeals] Settlement Officer, we intend to file an offer in compromise.”⁴ In petitioners’ Response to the Motion For Summary Judgment, they requested that the Court “compel the parties to enter into good faith settlement discussions beginning with the IRS waiving its requirement for all estimated taxes to be paid before considering an Offer in Compromise.”

In January 2018 petitioners submitted an offer-in-compromise.⁵ After respondent determined that the offer-in-compromise was not processable because of petitioners’ failure to make estimated tax payments for the 2017 and 2018 taxable years, petitioners withdrew the offer-in-compromise.

C. Petitioners’ History of Not Paying Estimated Tax

Petitioners did not make any payment of estimated tax for 2014, the taxable year in issue, or for any taxable year thereafter. Accordingly, petitioners have accumulated large unpaid liabilities for those years, as shown in the following table:

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⁴ In their October 30, 2018 Response to respondent’s Motion For Summary Judgment, petitioners state that they submitted an offer-in-compromise to respondent on January 16, 2018, some eight and one-half months after the notice of determination was sent to them, but that they voluntarily withdrew the offer-in-compromise because they were unable to make estimated tax payments.

⁵ A December 3, 2018 Account Transcript for the taxable year 2016 indicates that petitioners submitted an offer in compromise on January 23, 2018, but withdrew it on February 6, 2018.

<u>Tax Year</u>	<u>Tax Reported per Return</u>	<u>Withholding</u>	<u>Unpaid Liability per Return*</u>	<u>Percent Unpaid per Return</u>
2014	\$70,018	\$24,148	\$45,870	65.5%
2015	58,293	11,677	45,995**	78.9
2016	52,474	20,230	32,244	61.4
2017	37,001	11,720	25,281	68.3
2018***	---	---	---	---

* Exclusive of penalties and interest

** Net of refundable credit of \$621

*** This tax year is not yet closed; however, petitioners have made no payment of estimated tax as of December 3, 2018.

II. Discussion

1. Summary Judgment

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 upon all or any part of the legal issues in controversy. Rule 121(a).⁶ The Court may grant summary judgment only if there are no genuine disputes or issues of material fact and the moving party is entitled to judgment as a matter of law. Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

2. Hearings Under Section 6330

Section 6331(a) authorizes the Commissioner to levy on property and property rights 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 Commissioner has given written notice to the taxpayer 30 days before the levy. Section 6330(a) requires the Commissioner to send a written notice to the taxpayer of the amount of the unpaid tax and of the taxpayer’s right to a section 6330 hearing at least 30 days before the levy is begun.

⁶ All Rule references are to the Tax Court Rules of Practice and Procedure.

If a section 6330 hearing is requested, the hearing is to be conducted by the IRS Appeals Office, and at the hearing the officer conducting the conference must verify that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(b)(1), (c)(1). The taxpayer may raise at the hearing “any relevant issue relating to the unpaid tax or the proposed levy”. Sec. 6330(c)(2)(A). The taxpayer may also raise challenges to the existence or amount of the underlying tax liability at a 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, 9 (2004).

This Court has jurisdiction under section 6330 to review the Commissioner’s administrative determinations. Sec. 6330(d); see Iannone v. Commissioner, 122 T.C. 287, 290 (2004). 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, the Court reviews the determination for abuse of discretion. Id. at 182.

a. Underlying Tax Liability

The record in this proceeding indicates that throughout the administrative process, petitioners have at no time sought to challenge the underlying tax liability for 2014, the taxable year in issue. The general rule in this Court is that, on appeal of a collection determination, the Court will limit its review to those issues properly raised during the collection hearing. Giamelli v. Commissioner, 129 T.C. 107, 114-115 (2007); Magana v. Commissioner, 118 T.C. 488, 493-494 (2002). See also Rule 331(b)(4).

Accordingly, the Court will not consider any adjustment to the amount of the underlying liability for 2014 and will review respondent’s 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); Ansley-Sheppard-Burgess Co. v. Commissioner, 104 T.C. 367, 371 (1995).

b. Collection Alternatives

During the administrative hearing petitioners expressed interest in pursuing collection alternatives, with the principal focus being on an installment agreement. Similarly, the petition reprises a desire to submit an offer-in-compromise and

requests that the Court provide petitioners with more time to complete and assemble the supporting documentation.

Installment agreements and offers-in-compromise are forms of collection alternatives. As a prerequisite for consideration or approval by the IRS of such types of collection alternatives, including the administrative relief afforded by currently not collectible status, it is generally incumbent on a taxpayer to provide requested financial information to the ASO in order to permit evaluation of the taxpayer's ability to pay. See 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); Doonis v. Commissioner, T.C. Memo. 2014-168, at *10 (noting that to be eligible for currently not collectible status, taxpayers must show they have no ability to pay their outstanding tax liability based on their current assets, income, and expenses).

Similarly, IRS guidelines with respect to collection alternatives direct that the taxpayer must be in current compliance with filing and estimated payment obligations. E.g., McLaine v. Commissioner, 138 T.C. 228, 243 (2012); Giamelli v. Commissioner, 129 T.C. at 115-116. Moreover, it is not an abuse of discretion for the ASO to decline to consider an installment agreement or offer-in-compromise where no specific collection alternative proposal is ever placed before the reviewing officer. See, e.g., Kindred v. Commissioner, 454 F.3d at 696; Kendricks v. Commissioner, 124 T.C. 69, 79 (2005). Stated otherwise, it is the obligation of the taxpayer, not the reviewing officer, to start negotiations regarding collection alternatives by making in the first instance a specific proposal.

Petitioners rejected the ASO's initial proposed installment agreement of \$12,815 per month and ASO's counter-proposal of \$8,100 on the grounds that petitioners could not afford to make the payments, even though the ASO's counter-proposal was based on the financial information provided by petitioners themselves. Additionally, petitioners indicated during the administrative hearing that they would look into filing an offer-in-compromise. Petitioners, however, never submitted an offer-in-compromise during the administrative stage of this case, provided any further information or documents to the ASO after the April 20, 2017 conference, and failed to file an offer-in-compromise prior to the issuance of the notice of determination. In short, the ASO did not abuse her discretion in denying petitioners' request for a collective alternative when petitioners rejected the ASO's installment agreement proposals, including the counter-proposal that was based on financial information that petitioners themselves submitted, and when petitioners failed to submit an offer-in-compromise to the ASO.

c. Verification of Procedures

It is well settled that no particular form of verification is required; that no particular document need be provided to taxpayers at a hearing conducted under section 6330; and that Forms 4340, Certificate Of Assessments, Payments, And Other Specified Matters, and transcripts of account may be used to satisfy the requirements of section 6330(c)(1). Roberts v. Commissioner, 118 T.C. 365, 371 n.10 (2002), *aff'd*, 329 F.3d 1224 (11th Cir. 2003); Nestor v. Commissioner, 118 T.C. 162, 166 (2002); Lunsford v. Commissioner, 117 T.C. 183, 187 (2001). The Form 4340, transcripts, and materials that are referenced in and/or attached as exhibits to respondent's Motion For Summary Judgment and accompanying declaration, along with the statements of the ASO in the notice of determination, show that required assessment and collection procedures were followed.

III. Conclusion

Drawing all factual inferences against respondent, the Court concludes that there are no genuine issues of material fact in this case and that respondent is entitled to judgment as a matter of law.

Premises considered, it is hereby

ORDERED that respondent's Motion For Summary Judgment, filed September 27, 2018, and supplemented December 4, 2018 and December 18, 2018, is granted. It is further

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ORDERED AND DECIDED that respondent may proceed with the proposed collection action in respect of petitioners' outstanding income tax liability for the taxable (calendar) year 2014, as determined by respondent's Appeals Office in its Notice Of Determination Concerning Collection Action(s), dated May 1, 2017, upon which notice this case is based.

(Signed) Robert N. Armen
Special Trial Judge

Entered: **DEC 19 2018**