

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MELVYN DUANE SALTER,)	
)	SR
Petitioner,)	
)	
v.)	Docket No. 553-18 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This collection case is before us on the Commissioner’s motion for summary judgment. Because we find that the settlement officer did not abuse her discretion in sustaining the Commissioner’s levy, we grant the motion.

This case involves Mr. Salter’s petition challenging the Commissioner’s Notice of Determination Concerning Collection Action dated December 13, 2017. That determination sustained a levy against Mr. Salter for tax years 2009, 2010, and 2011. On his Form 12153, Request for a Collection Due Process or Equivalent Hearing, Mr. Salter wrote “[t]he IRS has violated My Constitutional Rights, I am Appealing The Judges Prior decision As Not All Proper steps were followed by the Clerk of Court & the IRS fails to treat me with Courtesy & will not Answer my questions.” Mr. Salter did not check any of the boxes available to indicate that he would like to discuss a Collection Alternative. Throughout correspondence with the settlement officer Mr. Salter did not request a collection alternative and did not come into filing compliance or provide financial information as requested. The settlement officer advised Mr. Salter that she could not consider a collection alternative without this information.

On December 13, 2017, the Commissioner sent Mr. Salter a notice of determination informing him that the levy was sustained. Shortly thereafter Mr. Salter filed his petition in this case. The Commissioner filed a motion for summary judgment on December 26, 2018. In his response to that motion, Mr. Salter repeated his assertions that the Internal Revenue Services had not answered

his question and that his rights have been violated. He did not address issues relevant to this collection action.

The issue before this Court is whether we should grant the Commissioner's motion for summary judgment. Under Rule 121(a)¹, either party may move for summary judgment regarding all or any part of the legal issues in controversy. We may grant summary judgment only if there is no genuine dispute as to any material fact.² The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute as to any material fact.³

The underlying liabilities in this case are not in dispute. When a taxpayer has a prior opportunity to dispute the underlying liability, the taxpayer may not challenge the liability in a collection proceeding.⁴ The issue of whether the liabilities for tax years 2009 and 2010 could be disputed was previously addressed in a different case heard by this Court. For tax year 2011, the Commissioner sent a notice of deficiency to Mr. Salter. Mr. Salter did not file a petition in this Court challenging the 2011 notice of deficiency. Because Mr. Salter had previous opportunity to challenge the underlying liabilities for each of the years at issue, the settlement officer was not required to consider the underlying liabilities for any of these years in the collection hearing.

We review the Commissioner's determination to sustain the levy for abuse of discretion.⁵ Section 6330(c)(3) requires the Commissioner, in making his determination, to: (1) verify that the requirements of applicable law and administrative procedure have been met; (2) consider issues raised by the taxpayer; and (3) decide whether any proposed collection action balances the need for efficient collection with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. Section 6630(d)(1) grants Mr. Salter the right, which he exercised, to petition us for review of the Commissioner's determination. Abuse of discretion exists where the Commissioner acted

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code (Code) at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

² Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

³ Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

⁴ Bell v. Commissioner, 126 T.C. 356, 358 (2006).

⁵ Goza v. Commissioner, 114 T.C. 176, 181-182 (2000); Sego v. Commissioner, 114 T.C. 604, 610 (2000).

arbitrarily, capriciously, or without sound basis in fact or law in making the determination.⁶

The Commissioner did not abuse his discretion in sustaining the levy. The settlement officer established that applicable laws and procedures were complied with and conducted a balancing analysis. She encouraged Mr. Salter to submit the information necessary for her to consider a collection alternative, but he did not do so. It is not an abuse of discretion for the Commissioner to reject a taxpayer's request for a collection alternative when the taxpayer does not provide financial information⁷ or comply with filing requirements.⁸ It is also not an abuse of discretion for the Commissioner to sustain a collection action when the taxpayer does not propose a collection alternative.⁹ Mr. Salter has raised no issues relevant to collection.

Because there are no disputes of material fact with respect to the collection action and the Commissioner did not abuse his discretion in sustaining the levy, we must render a decision for the Commissioner as a matter of law. Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment, filed December 26, 2018, is granted. It is further

ORDERED AND DECIDED that respondent's determination as set forth in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated December 13, 2017, is sustained.

(Signed) Ronald L. Buch
Judge

Entered: **FEB 05 2019**

⁶ See Giamelli v. Commissioner, 129 T.C. 107, 111 (2007).

⁷ Gardner v. Commissioner, T.C. Memo. 2017-107 at *9, Roman v. Commissioner, T.C. Memo. 2004-20.

⁸ Giamelli v. Commissioner, 129 T.C. 107, 111-112 (2007).

⁹ Kendricks v. Commissioner, 124 T.C. 69, 79 (2005).