

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CLC

CRAIG A. SOPIN & RUTH SOPIN,)
)
 Petitioners,)
)
 v.) Docket No. 6911-18 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER AND DECISION

This is a “collection due process” (“CDP”) case brought pursuant to 26 U.S.C. sections 6320(c) and 6330(d)(1). Petitioners Craig and Ruth Sopin ask us to review a notice of determination (“NOD”) issued by the Office of Appeals of the Internal Revenue Service (“IRS Appeals”) sustaining the issuance of a notice of the filing of a lien to collect the Sopins’ Federal income tax for 2014. The Commissioner moved for summary judgment; petitioners’ counsel filed no response, despite our order to do so; and we will grant the Commissioner’s motion.

Background

The Commissioner’s motion shows the following facts, which the Sopins have not disputed:

2014 liability

The Sopins filed a 2014 Federal income tax return, self-reporting a liability of \$442,332. (Doc. 10, Ex. 1-R; Doc. 11, Ex. B) They do not challenge that liability. They did not fully pay the tax when due, and their 2014 liability has risen as the unpaid tax liability has accrued additions to tax and interest. The Sopins’

petition eventually filed in this court admits an unpaid 2014 balance of over \$62,000. (Doc. 1, p. 7)

On or after July 28, 2017, the IRS filed a “Notice of Federal Tax Lien” for the Sopins’ 2014 income tax liability with the Prothonotary of Bucks County, Pennsylvania; with the Prothonotary of Philadelphia County, Pennsylvania; with the Clerk of the Circuit Court of Pinellas County, Florida; and with the Recorder of Deeds of Taney County, Missouri. (Doc. 11, Ex. D.) On or about August 8, 2017, the IRS sent the Sopins a “Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320” for 2014. (Id.)

On August 8, 2017, the Sopins wrote the IRS a check for \$373,663 (id.) that paid some but not all of their 2014 liability. Again, it appears that the unpaid balance was about \$62,000.

CDP hearing request

On or about September 11, 2017, the Sopins sent the IRS a Form 12153, “Request for a Collection Due Process or Equivalent Hearing” (Doc. 1, Ex. B; Doc. 11, Ex. E). The Form 12153 did not challenge the liability and did not request a collection alternative (such as an Offer-in-Compromise or an Installment Agreement). The only relief requested was (without indication as to the year indicated) “Discharge” and “Withdrawal” of the liens, with this comment:

FEDERAL TAX LIENS WERE IMPROPERLY FILED IN
MULTIPLE JURISDICTIONS. AS EXPLAINED BELOW.

As to 2014, the form later stated:

FEDERAL TAX LIEN FOR 2014 TAX LIABILITY WAS FILED
DESPITE TAXPAYERS’ EXPRESS WILLINGNESS TO PAY
BALANCE IN FULL AND PAYMENT OF \$373,663. THESE
LIENS SHOULD NEVER HAVE BEEN FILED AND MUST BE
DISCHARGED/WITHDRAWN IMMEDIATELY.

Correspondence before the CDP hearing

On October 31, 2017, IRS Appeals sent the Sopins a letter (Doc. 11, Ex. F) acknowledging receipt of their Form 12153 and informing them that IRS Appeals would conduct their CDP hearing as a telephone conference on November 29,

2017. The letter from IRS Appeals requested that, within 14 days, the Sopins send to the IRS Appeals settlement officer (“SO”) a completed Form 433-A, “Collection Information Statement,” and proof of estimated tax payments paid in full for the year to date. The Sopins sent no financial information to IRS Appeals following the October 31, 2017, letter.

CDP hearing

The SO telephoned the Sopins’ counsel on November 29, 2017, and they discussed the Sopins’ recent history with IRS collection personnel. The SO’s notes of the conversation include the following:

TP [i.e., taxpayer] believes that the lien was filed in bad faith. The TP made a large payment to show that they plan on paying the taxes and the RO filed the lien anyway. I pointed out that the large payment was not made until after the due date [July 7, 2017] established by the RO [i.e., the Revenue Officer previously responsible for collection] and that the financial information had still not been received. I noted the info found in the ICS history that the TP indicated an inability to pay the balance due and the RO then found out that the TP has over \$500,000 equity in real estate and a large collection of something. I noted that the financial information has not been provided, there is a new balance due for 2016, and no ES [i.e., estimated tax] payments for 2017. POA [i.e., the Sopins’ representative or “power of attorney”] is aware of all of this. He said that the TP is not happy that the RO filed the lien and that he filed it in more than one jurisdiction. POA did not raise any issues with errors. The TP is just not happy with the process. I stated that I will issue the NOD. [Doc. 11, Ex. C (emphasis added).]

NOD and Tax Court proceedings

About three months later, on March 2, 2018, IRS Appeals sent to the Sopins an NOD (Doc. 1, Ex. A; Doc. 11, Ex. A), with an attachment detailing the matters considered in reaching the conclusion to sustain the lien filing. The detail included the following:

[Y]ou believed that the lien was filed in bad faith. Your representative stated that he was not aware on any errors in the lien filing. The record indicates that the Notice of Federal Tax Lien was filed in accordance with IRS procedures. You did not provide the information necessary to consider a discharge or a lien withdrawal.

Through counsel, the Sopins filed with this Court a petition (Doc. 1) challenging the NOD on April 9, 2018 (which was timely because it was mailed on March 28, 2018).

The Sopins' petition sought relief as to tax years 2011 and 2014, and most of the allegations and contentions in the petition appear to pertain to 2011. (*Id.*) However, IRS Appeals has issued no NOD as to 2011. The Commissioner moved to dismiss 2011 (Doc. 5), the Sopins did not object, and we granted the motion (Doc. 6). Consequently, only 2014 remains in this case.

On November 29, 2018, the Commissioner filed a motion for summary judgment (Doc. 10). On that same date we issued an order (Doc. 13) requiring "that, no later than December 28, 2018, petitioners shall file a response to the Commissioner's motion for summary judgment." No response has been filed on behalf of the Sopins.

Discussion

I. Summary judgment principles

We may grant summary judgment where there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(a) and (b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994). The moving party (here, the Commissioner) bears the burden of showing that there is no genuine dispute as to any material fact, and factual inferences will be viewed in the manner most favorable to the nonmoving party--here, the Sopins. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985). Facts are viewed in the light most favorable to the nonmoving party. See Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

Rule 121(d) provides: "If the adverse party does not so respond [to a motion for summary judgment], then a decision, if appropriate, may be entered against such party." See also Rule 123(b) ("For failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court ... the Court may dismiss a case at any time and enter a decision against the petitioner").

In this case, the material facts are not in dispute. The Commissioner showed that the Sopins have an unpaid balance of 2014 income tax, that the IRS filed notices of lien, and that at the CDP hearing before IRS Appeals, the Sopins did not

challenge the liability, propose any collection alternative, or argue for any defect (other than “bad faith”) in the lien filings.

II. Collection Due Process principles

When a taxpayer fails to pay any Federal income tax liability after demand, section 6321 imposes a lien in favor of the United States on all the property of the delinquent taxpayer, and section 6323 authorizes the IRS to file notice of that lien. However, the IRS must provide written notice of a tax lien filing to the taxpayer within five business days. After receiving such a notice, the taxpayer may request an administrative hearing before Appeals. Sec. 6320(a)(3)(B), (b)(1). Administrative review is carried out by way of a hearing before IRS Appeals pursuant to section 6330(b) and (c); and, if the taxpayer is dissatisfied with the outcome there, he can file with the Tax Court a petition for review under section 6330(d), as the Sopins have done.

For the agency-level CDP hearing before IRS Appeals, the pertinent procedures are set forth in section 6330(c). Those procedures require IRS Appeals to consider four sets of issues:

First, the appeals officer must obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(c)(1). The Sopins do not contend that the SO failed to obtain the necessary verification, and we therefore do not discuss further the verification requirement.

Second, a taxpayer may contest the existence and amount of the underlying tax liability if he did not have a prior opportunity to dispute the tax liability. Sec. 6330(c)(2)(B). The Sopins did not dispute their underlying liability before IRS Appeals and make no contention in this case as to the underlying liability.

Third, the taxpayer may “raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy” or, in a case like this one, relating to of the lien filing, including challenges to the appropriateness of the collection action and offers of collection alternatives. Sec. 6330(c)(2)(A). The Sopins made no proposal of a collection alternative, but they did challenge the propriety of the lien, so we discuss this issue below in part III.

Fourth, at the CDP hearing IRS Appeals is to consider “whether any proposed collection action [here, the filing of the NFTL] balances the need for the

efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.” Sec. 6330(c)(3)(C). The Sopins have made no contention as to this balancing.

When Appeals issues its determination, the taxpayer may “petition the Tax Court” for review of such determination”, pursuant to section 6330(d)(1), as the Sopins have done.

III. Propriety of the lien

We see no cognizable challenge to the propriety of the IRS’s filing of a notice of lien to protect the Government’s interest in collecting the Sopins’ unpaid 2014 tax liability. At the time that IRS collection personnel directed the filing of the notice of lien in several jurisdictions (in late July 2017), the Sopins had a 2014 liability of about a half-million dollars. The Sopins did thereafter send the IRS a large check, but even then the liability was not fully paid. We see no manifest “bad faith” in the lien filing.

The Sopins’ petition in this Court asked for “release” of the lien, and their prior Form 12153 submitted to IRS Appeals asked for “withdrawal” or “discharge”--remedies for which the Code does make provision. That is, section 6325(a) provides the conditions for possible “Release of Lien”; section 6325(b) provides the conditions for possible “Discharge of Property” from a lien; and section 6323(j) provides the conditions for possible “Withdrawal of Notice [of Lien] in Certain Circumstances”. The Sopins do not suggest which (if any) of these conditions they contend they meet. As we review those statutes, it does not appear that the Sopins met any of those conditions so as to be eligible for any such relief; and we decline, in the absence of their making any argument in response to the Commissioner’s motion, to attempt to imagine arguments they might make under these statutes.

We see no abuse of discretion in the NOD issued by IRS Appeals. It is therefore

ORDERED that the Commissioner’s motion for summary judgment is hereby granted, both on its merits and, in the alternative, on the ground that the Sopins 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 the IRS may proceed with the collection of petitioners' Federal income tax for 2014 as described in the "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code" dated March 2, 2018.

**(Signed) David Gustafson
Judge**

ENTERED: **FEB 06 2019**