

UNITED STATES TAX COURT
WASHINGTON, DC 20217

TAMARA ANN MCDONALD,)	
)	
Petitioner,)	
)	
v.)	Docket No. 11038-17SL.
)	
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 a declaration executed by Settlement Officer Josephine Stockli (SO Stockli), filed pursuant to Rule 121.¹ Respondent seeks to sustain a determination made by the Internal Revenue Service (IRS) Office of Appeals (Appeals Office) to proceed with a proposed levy action to collect petitioner’s unpaid Federal income taxes for 2013 and 2014. Petitioner filed a response in opposition to respondent’s motion.

Background

In 2015 petitioner filed Federal income tax returns for the taxable years 2013 and 2014 (years in issue) and failed to remit full payment for either year. The IRS subsequently assessed the taxes and interest, as well as additions to tax for failure to pay estimated tax, for late filing (for 2013 only), and for failure to pay tax, and sent to petitioner first and second notices and demand for payment for the years in issue. Petitioner did not remit payment.

Respondent subsequently issued to petitioner a Notice of Intent to Levy and Notice of Your Right to a Hearing for both` years in issue. Petitioner then submitted to the IRS a Form 12153, Request for Collection Due Process or

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.

Equivalent Hearing, and indicated that she intended to enter into an installment agreement. She stated in the Form 12153 that “I had an installment plan but my [bank] account changed and have not been able to reach the IRS by phone or do the online application”. Several days after filing her Form 12153, petitioner submitted to the IRS a Form 9465, Installment Agreement Request, for the years in issue.

In January 2017 the IRS sent a letter to petitioner acknowledging receipt of her request for an administrative hearing and giving her 30 days to file a Federal income tax return for the taxable year 2015. Petitioner had previously submitted a 2015 tax return to the IRS but it had been rejected. In February 2017 SO Stockli sent a letter to petitioner explaining the appeals process, scheduling a telephone conference, and requesting that she submit a completed Form 433-A (collection information statement) and a signed tax return for 2015. The letter stated that because petitioner had failed to file a Federal income tax return for 2015, she was ineligible to enter into an installment agreement. Petitioner subsequently provided SO Stockli with an unsigned tax return for 2015 and a Form 433-A without supporting documentation.

On March 1, 2017, SO Stockli held a telephonic administrative hearing with petitioner and informed her that she would not be eligible to enter into an installment agreement unless she submitted a properly supported Form 433-A and a signed tax return for 2015, and gave her a deadline of March 15, 2017, to do so. Although the deadline was later extended by two weeks, petitioner failed to provide the requested documents. SO Stockli then verified that all legal and administrative requirements for the underlying assessment and the proposed levy action had been met and issued to petitioner a notice of determination sustaining the proposed levy action. Petitioner invoked the Court's jurisdiction by filing a timely petition for review. The petition states in relevant part that petitioner was “denied the ability to set up payment arrangements” because there was a problem with her filing her 2015 tax return.

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 declaration 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 information about 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 her underlying tax liability if she 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 be 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,² we review respondent’s determination for abuse of discretion. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). 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).

²At no time during the proceedings in this case has petitioner disputed the underlying tax liabilities.

The record shows that petitioner was not in compliance with filing requirements for the taxable year 2015 and that she failed to produce the financial information that the Appeals Office needed to evaluate her eligibility for an installment agreement. It is well settled that the Appeals Office is justified in rejecting a proposed collection alternative, such as an installment agreement, if the taxpayer fails to submit requested financial information or is not in compliance with Federal tax laws. See, e.g., Pough v. Commissioner, 135 T.C. 344, 351 (2010).

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). 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 September 18, 2018, 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 April 14, 2017, upon which this case is based, is sustained.

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

ENTERED: **FEB 27 2019**