

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

JANINE P. ANTOINE,)	
)	
Petitioner,)	
)	
v.)	Docket No. 12070-18 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER AND DECISION

This is a collection review case involving the filing of a Federal tax lien in respect of petitioner’s outstanding liability for income taxes for 2014 and 2015. See secs. 6320, 6330(d)(1); Rules 330-334.¹ Pending before the Court is respondent’s Motion For Summary Judgment, filed November 30, 2018, and the supporting Declaration Of Kirpal K. Beasla, also filed November 30, 2018. Petitioner filed a Notice Of Objection on January 28, 2019, objecting to the granting of respondent’s motion. For reasons to be discussed, the Court will grant respondent’s motion.

Background

Petitioner resided in the State of California at the time that the petition was filed with the Court.

¹ Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

Petitioner received large refunds for 2014 and 2015 based on overstatements of withheld income tax.² Upon discovering the overstatements respondent summarily assessed the excess amounts. See sec. 6201(a)(3); Bregin v. Commissioner, 74 T.C. 1097, 1104 (1980) (“ * * * Congress has given the Commissioner authority to recover any amounts due as a result of the taxpayer’s overstating the taxes withheld on his wages without the necessity of issuing a notice of deficiency.”). Those assessments gave rise to unpaid balances due.

In addition, respondent subsequently examined petitioner’s income tax returns for 2014 and 2015 and determined deficiencies for both years. See secs. 6211, 6212. Petitioner defaulted on the notice of deficiency for 2014, leading to the assessment of the deficiency for that year. See sec. 6213(c). However, for 2015 petitioner commenced an action for redetermination of deficiency, see sec. 6213(a), but she ultimately agreed to a modestly lesser deficiency (\$2,500 in lieu of \$2,600), which was assessed in due course. See sec. 6215(a).

Petitioner’s failure to pay her outstanding liabilities for 2014 and 2015 lead respondent to file a notice of Federal tax lien with the County Recorder for Los Angeles County and to mail to petitioner a Notice Of Federal Tax Lien Filing And Your Right To A Hearing Under IRC 6320. See secs. 6320(a), 6323(a). Petitioner responded by filing with respondent a Form 12153, Request For A Collection Due Process Or Equivalent Hearing. See sec. 6320(b). On the form petitioner checked the box for withdrawal of lien.

Petitioner’s request for an administrative hearing (commonly referred to as a “Collection Due Process” or “CDP” hearing) was assigned to Settlement Officer Kirpal K. Beasla (hereinafter, the settlement officer or SO). Notably, the settlement officer’s offer of a telephone conference went unanswered by petitioner. Similarly, the SO’s attempts to obtain documentation proved fruitless. In short, petitioner never engaged with the settlement officer or otherwise participated in the administrative process after filing Form 12153.

On May 29, 2018, respondent’s Appeals Office sent petitioner a Notice Of Determination Concerning Collection Action(s) sustaining the filing of the notice

² For 2014 petitioner reported taxable income of \$77,872 and tax of \$9,463. She claimed, and received, a refund of \$24,477 based on claimed withholding of \$33,940 (i.e., \$33,940 - \$9,463).

For 2015 petitioner reported taxable income of \$76,341 and tax of \$14,875. She claimed, and received, a refund of \$24,580 based on claimed withholding of \$39,455 (i.e., \$39,455 - \$14,875).

of Federal tax lien. Petitioner responded by filing a petition with this Court, paragraphs 5 and 6 of which state, in their entirety, as follows:

5. FEDERAL INCOME TAX WITHHOLDING WAS VERIFIED.

6. FROM [sic] 1099

No document other than a portion of the May 29, 2018 notice of determination was attached to the petition as an exhibit.

After the case was at issue respondent filed his motion for summary judgment and the supporting declaration. After requesting an extension, petitioner filed her notice of objection, a one-paragraph document in which petitioner alleges that “there is a dispute between the parties in regards to withholdings.” However, petitioner did not elaborate on this statement, nor did she attach any documents in support of it.

Discussion

Charitably read, the petition and the notice of objection seek only to raise an issue regarding the amounts of withheld income tax for 2014 and 2015 to which petitioner is entitled. However, assuming arguendo that petitioner was entitled to raise that issue before respondent’s Appeals Office during the course of the administrative hearing, see sec. 6330(c)(2)(B); see also sec. 6320(c), petitioner failed to properly do so. See sec. 301.6320-1(f)(2), Q&A-F3, Proced. & Admin. Regs. (“An issue is not properly raised * * * if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.”); Giamelli v. Commissioner, 129 T.C. 107, 112-116 (2007); Obeirne v. Commissioner, T.C. Memo. 2018-210, at *3; Delgado v. Commissioner, T.C. Memo. 2011-240, at *2. In the present case petitioner never engaged with the settlement officer during the administrative process, and she never furnished information, much less documentation, regarding any the amount of her withholdings for either 2014 or 2015.

Further, Rule 121(d) provides in relevant part as follows:

When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of such party’s pleading, but such party’s

response, by affidavits or declarations or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine dispute for trial. If the adverse party does not so respond, then a decision, if appropriate, may be entered against such party.

In the present case petitioner filed a notice of objection to respondent's motion, but such notice did nothing other than to allege that "there is a dispute between the parties in regards to withholdings." However, petitioner did not elaborate on this statement, nor did she attach any documents in support of it. In short, petitioner did not satisfy the Rule's requirement of "set[ting] forth specific facts showing that there is a genuine dispute for trial."

Premises considered, it is hereby

ORDERED that respondent's Motion For Summary Judgment, filed November 30, 2018, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action (lien) in respect of petitioner's outstanding income tax liability for income taxes for 2014 and 2015, as determined by respondent's Appeals Office in its Notice Of Determination Concerning Collection Action(s), dated May 29, 2018, upon which notice this case is based.

(Signed) Robert N. Armen
Special Trial Judge

ENTERED: **MAR 18 2019**