

reduced liability. Appeals thereafter issued a “Notice of Determination Concerning Collection Action(s) under section 6330” that (among other things) sustained the lien with respect to 2012. But in March 2018, the IRS processed Mr. Baeza’s amended return for 2012 and abated a portion of his 2012 liabilities, resulting in an overpayment for that year. (See Doc. 16.)

B. Discussion

As a result of the abatements pursuant to the amended return, there has been full payment of Mr. Baeza’s 2012 liability. The lien has been released as to 2012. The Commissioner has moved that the case be dismissed as to 2012 on grounds of mootness, and Mr. Baeza does not object. We will grant the Commissioner’s motion. We will not further discuss 2012 in this order.

II. Levy

The IRS sent Mr. Baeza a “Notice of Intent to Levy and Your Right to a Hearing” for the 2014 and 2015 taxable years on August 1, 2017 (tallying combined liabilities of about \$54,000 for those two years). After the CDP hearing that he then requested, Appeals’ notice of determination stated: “While the proposed levy notice was appropriately issued, levy action is no longer warranted”, evidently because of an installment agreement into which Mr. Baeza had entered (as is set out below). We construe this determination to mean that Appeals did not sustain the notice of proposed levy, and Mr. Baeza’s petition does not mention the proposed levy. We do not discuss the levy further in this order.

II. Tax years 2013-2015

A. Background

The Commissioner’s motion for summary judgment (Doc. 7) shows the following facts, which Mr. Baeza has not disputed:

Mr. Baeza filed Federal income returns for the years 2013, 2014, and 2015. Mr. Baeza did not fully pay the liabilities reported on those returns. On August 14, 2017, he entered into an installment agreement with the IRS (Doc. 8, Ex. E at 3) to pay his tax liabilities for those three years.

However, the IRS’s collection machinery had already begun to operate with respect to those unpaid liabilities, and just days before Mr. Baeza entered into the

installment agreement, the IRS sent Mr. Baeza a “Notice of Federal Tax Lien and Your Right to a Hearing Under IRC 6320” (Doc. 8, Ex. D) for the 2013-2015 years dated August 10, 2017, which showed liabilities totaling about \$58,000. Presumably, he had not received that notice at the time he entered into the installment agreement.

Mr. Baeza’s representative timely sent to the IRS a Form 12153, “Request for a Collection Due Process Hearing” (Doc. 8, Ex. E). The form requested withdrawal of the lien because Mr. Baeza was in an installment agreement with the IRS. Mr. Baeza did not challenge his tax liabilities for 2013 through 2015. He did not propose any collection alternative (other than the installment agreement already in place). Rather, he argued that the lien was improper in view of the pending installment agreement.

On January 18, 2018, Appeals issued its notice of determination sustaining the lien filing. (Doc. 8, Ex. A.) The notice determined: “All required legal procedures were * * * followed in filing the Notice of Federal Tax Lien”. An attachment to the notice stated that “[t]he Settlement Officer considered whether any of the criteria for allowing withdrawal of the lien existed in your case”, and briefly explained why withdrawal was not appropriate.

Mr. Baeza timely filed his petition in this Court on February 15, 2018. On December 20, 2018, the Commissioner moved for summary judgment, showing the foregoing facts. By our order of December 21, 2019 (Doc. 10), we explained the nature of a motion for summary judgment and the procedure for responding to it, and we ordered “that, no later than January 11, 2019, petitioner Esteban Baeza shall file with the Court and serve on the Commissioner a response to the Commissioner's motion for summary judgment.” Our order explained: “Mr. Baeza should note that Tax Court Rule 121(d) provides that, if he fails to respond to the IRS's motion for summary judgment, then ‘a decision, if appropriate, may be entered against’ him.”

Despite our order, Mr. Baeza has filed no response to the motion for summary judgment.

B. Discussion

Mr. Baeza’s only contention in this case is that Appeals should not have sustained the lien notice since he had entered into an installment agreement with the IRS pursuant to which he had agreed to pay over time the liabilities that were

the subject of the lien notice. He has not alleged any other defect in Appeals handling of his CDP hearing. He has not challenged his liability for the taxes whose collection is at issue. He has not contended that Appeals erred by denying him any collection alternative (nor that he proposed any).

Appeals explained in its notice of determination why the lien notice was proper notwithstanding the installment agreement, and the Commissioner's motion addresses the same subject at greater length. Mr. Baeza has offered no counter-argument. If a delinquent taxpayer enters into an installment agreement with the IRS, then it would stand to reason that the IRS might forebear active collection of the unpaid liabilities--and that is what the IRS did in Mr. Baeza's case by determining that "levy action is no longer warranted". However, since the IRS has thus agreed to wait for the taxpayer to pay those liabilities over time, it seems reasonable that the IRS might file a notice of lien in order to protect its ability to collect in the event that the taxpayer fails to fulfill the terms of the installment agreement. Mr. Baeza has explained no reason why this is not so in his case.

It is therefore

ORDERED that the Commissioner's unopposed motion to dismiss as to 2012 on grounds of mootness, as supplemented, is granted for the reasons stated above and stated in that motion, and the year 2012 is dismissed as moot. It is further

ORDERED that the Commissioner's motion for summary judgment, as to 2013, 2014, and 2015 (Doc. 7) is hereby granted, both on its merits and on the alternative ground that Mr. Baeza failed to comply with the Court's order that he respond to the motion (see Rules 121(d), 123(b)). It is further

ORDERED AND DECIDED that respondent may proceed with the collection of petitioner's Federal income tax for the years 2013, 2014, and 2015 (but not 2012) as described in the "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330" dated January 18, 2018, sustaining the lien filing (but not the notice of proposed levy) for those three years.

(Signed) David Gustafson
Judge

ENTERED: **APR 19 2019**