

The Annesis offered to compromise their 2013 and 2014 liabilities for \$2,500, requesting a compromise based on Effective Tax Administration (ETA). They included with their offer a collection information statement with accompanying financial information. In support of the ETA offer, the Annesis also identified their claimed special circumstances.

This \$2,500 offer was forwarded to an offer specialist who reviewed the Annesis' financial information. The offer specialist determined their RCP was \$385,177. To determine their RCP, the offer specialist relied on information from the Annesis' most recently filed return and calculated their monthly income based on this one year of income. The offer specialist rejected the Annesis' offer-in-compromise because she concluded that the Annesis were able to pay the liability in full and that their special circumstances did not warrant a hardship.

The offer-in-compromise was sent to a settlement officer for the Annesis' appeal of the offer specialist's decision. During the hearing with the settlement officer, the Annesis' representative would not accept an installment agreement because she asserted that the Annesis were unable to make the payments. After the hearing, the Annesis' representative sent a fax to the settlement officer, asserting that the Internal Revenue Manual allows for the past three years of income to be averaged in calculating the Annesis' monthly income to determine their RCP.

The settlement officer reviewed the Annesis' financial information, determined the offer specialists' valuation methods were appropriate, and determined the Annesis' RCP was \$198,699, well above their total unpaid liability. The settlement officer concluded that the reasons the Annesis provided to justify an ETA offer did not warrant accepting less than the full amount owed.

On December 14, 2017, the settlement officer issued a notice of determination upholding the offer specialist's conclusion and sustaining the proposed levy action for 2013 and 2014. The notice of determination stated that an installment agreement was not a viable alternative because the Annesis would not agree to pay in installments. The notice also stated that "I Cannot Pay" was not a viable alternative because the financial analysis showed an ability to make monthly payments as well as available equity in real and personal property.

The Annesis timely filed a petition with the Court on January 18, 2018, while residing in Anchorage, Alaska. In their petition, they challenge the determination as to their 2013 and 2014 liability, arguing that the Commissioner erred in (1) "stating that no offer in compromise was pending", (2) "not

considering an offer in compromise as a collection alternative to levy action”, (3) “not entering into an offer in compromise under Effective Tax Administration based on [the Annessis’] special circumstances”, (4) “determining that rejection of [the Annessis’] offer would not cause economic hardship”, (5) “determining that the Notice of Intent was not overly intrusive”, (6) “stating that [the Annessis’] representative was unaware that the basis of the [offer-in-compromise] was Effective Tax Administration,” (7) “determining the value of [the Annessis’] assets”, (8) “determining [the Annessis’] monthly income”, (9) “not considering a 3 year average on monthly income”, (10) “denying [the Annessis’] secured debts/other expenses of \$939 a month”, (11) “not even considering an Installment Agreement”, and (12) “not placing [the Annessis] on currently not collectible”.

The Commissioner moved for summary judgment on all issues. In response, the Annessis decided “that for personal reasons they will not oppose the Motion.” However, “[t]hey continue to disagree with the assertions in [the Commissioner’s] Motion.”

Discussion

The issue before us is whether we should grant the Commissioner’s motion for summary judgment. Either party may move for summary judgment regarding all or any part of the legal issues in controversy.² We may grant summary judgment only if there is no genuine dispute as to any material fact.³ The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute as to any material fact.⁴

When, as here, the underlying tax liability is not at issue, we review the settlement officer’s determination for abuse of discretion.⁵ In reviewing for abuse of discretion, we do not conduct an independent review of the collection alternatives, and we do not substitute our judgment for that of the settlement officer; we review only to determine whether the settlement officer’s decision was

²Rule 121(a).

³Rule 121(b).

⁴Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff’d, 17 F.3d 965 (7th Cir. 1994).

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

arbitrary, capricious, or without sound basis in fact or law.⁶ 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. Here, we find that the settlement officer met all three requirements and did not abuse his discretion in rejecting the Annesis' offer-in-compromise.

The Annesis raised collection alternatives including an installment agreement and an offer-in-compromise. Although the Annesis initially indicated their interest in an installment agreement, there can be no abuse of discretion for failure to consider an installment agreement because the Annesis did not propose any terms for an installment agreement.⁷ Instead, the Annesis rejected any discussion of an installment agreement with the settlement officer when he attempted to address the possibility of entering into one.

The Commissioner also did not abuse his discretion in rejecting the Annesis offer-in-compromise. The regulations under section 7122(a) set forth three grounds for the compromise of a tax liability: (1) doubt as to liability; (2) doubt as to collectibility; or (3) promotion of effective tax administration.⁸ While the parties do not dispute the liability, the Annesis attempt to raise doubt as to collectibility by claiming the Commissioner incorrectly calculated their RCP. The Commissioner may reject an offer-in-compromise when the taxpayer's RCP is greater than the amount he proposes to pay.⁹ Here, the Annesis' proposed calculation method results in a RCP that far exceeds their offer amount. Therefore, the alleged error is immaterial and the Commissioner did not abuse his discretion.¹⁰

⁶Gustashaw v. Commissioner, T.C. Memo. 2018-215, at *14; see also Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006).

⁷See Glossop v. Commissioner, T.C. Memo. 2013-208, at *12.

⁸Sec. 301.7122-1(b), Proced. & Admin. Regs.

⁹See Johnson v. Commissioner, 136 T.C. 475, 486 (2011), aff'd, 502 F. App'x 1 (D.C. Cir. 2013). “[Reasonable collection potential] is generally calculated by multiplying a taxpayer’s monthly income available to pay taxes by the number of months remaining in the statutory period for collection and adding to that product the realizable net equity in the taxpayer’s assets.” Johnson v. Commissioner, 136 T.C. at 485.

¹⁰See Glossop v. Commissioner, at *16.

In certain cases, the Commissioner “may accept an offer of less than the total reasonable collection potential of a case if there are special circumstances.”¹¹ Special circumstances are (1) economic hardship resulting from the collection or (2) compelling public policy or equity considerations.¹² The record is clear that the settlement officer considered the Annesis’ economic hardship and public policy and equity arguments but ultimately found them lacking. The Commissioner thus did not abuse his discretion in denying the claim for an offer-in-compromise based on both economic hardship and public policy and equity considerations.

Conclusion

There is no genuine dispute as to any material fact with respect to the collection action, and 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 April 18, 2019, is granted. It is further

ORDERED AND DECIDED that the Commissioner’s determination as set forth in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated December 14, 2017, is sustained.

**(Signed) Ronald L. Buch
Judge**

Entered: **JUN 06 2019**

¹¹Gustashaw v. Commissioner, at *15 (quoting Rev. Proc. 2003-71, sec. 4.02(2), 2003-2 C.B. 517, 517).

¹²Sec. 301.7122-1(b)(3)(i) and (ii), *Proced. & Admin. Regs.*