UNITED STATES TAX COURT
WASHINGTON, DC 20217

SYM

ROGER O. BROWN & ELIZABETH BROWN,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 21199-17S L
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

ORDER AND DECISION

This section 6330(d)[1] case is before the Court on respondent's motion for summary judgment, filed April 23, 2018. By Order dated April 25, 2018, petitioners' response to respondent's motion was made due on or before May 16, 2018. Petitioners have not responded to the motion.[2] That being so, we proceed as though the facts relied upon in support of his motion are not in dispute, and those facts are summarized below.

[1] Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourtgov.

[2] Petitioners were advised in the Order that their failure to respond as directed could result in the granting of respondent's motion and entry of decision against them. See Rule 121(d); see, e.g., Lunsford v. Commissioner, 117 T.C. 183, 187 (2001). Nothing in the record suggests that the April 25, 2018, Order was not received by petitioners. Respondent's motion was assigned for disposition to the undersigned by Order dated May 16, 2019. The May 16, 2019, Order was returned to the Court on May 28, 2019, stamped, "moved, left no address, unable to forward, return to sender". If petitioners have moved after the petition was filed in this case, then they have failed to notify the Court of that event or a new address. See Rule 21(b)(4).

SERVED Jul 18 2019

In a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated September 6, 2017, (notice)[3] respondent determined that a proposed levy is an appropriate collection action with respect to petitioners' then outstanding 2014 and 2015 Federal income tax liabilities (underlying liabilities). The underlying liabilities were assessed in due course following the issuance of a notice of deficiency for tax year 2014 and after the return was filed for tax year 2015. See sec. 6213(c).

In their request for an administrative hearing, see sec. 6330(b)(1), petitioners did not request any collection alternative and appeared to only challenge the underlying liability for tax year 2014 by writing, " 2014 tax form 1099C inclusion in CP 2000 correspondence provided to prove insolvency". They also made a second and similar reference to the 1099C for tax year 2014 in paragraph 8 of the CDP request form. However, according to the Settlement Officer (SO), petitioners did not participate at all in the CDP hearing. The SO states she sent a letter dated July 7, 2017, which scheduled a July 25, 2017 hearing and requested financial information and proof of tax compliance for years 2010, 2011, 2015, and 2016. The SO received a voicemail from petitioners' power of attorney (POA) on July 24, 2017, but when she called back on July 24, 2017, and for the hearing, on July 25, 2017, she could not reach the POA. By August 29, 2017, the SO still had not received any contact or information from petitioners or their POA. On September 6, 2017, she sustained the collection action in a notice of determination.

If the taxpayer does not properly raise an issue at the CDP hearing, he is precluded from further challenging that issue, including a challenge to the underlying liability. See Giamelli v. Commissioner, 129 T.C. 107, 114. If a taxpayer requests consideration of an issue but then fails to present any evidence with respect to that issue after being given a reasonable opportunity to present such evidence then the issue is not properly raised. See Treas. Reg. sec. 301. 6320-1(f)(2) Q&A-F3. In this case, petitioners did not properly raise the issue of liability. That being so, we review the determination made in the notice for abuse of discretion. See Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). That is, we consider whether the determination was made, "arbitrarily, capriciously, or without sound basis in fact or law". Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

[3] A copy of the notice is attached to the petition.

It is not an abuse of discretion when the settlement officer sustains the collection action when a taxpayer does not provide financial documentation to support a collection alternative. See Willis v. Commissioner, T.C. Memo. 2003-302; Tucker v. Commissioner, T.C. Memo 2014-103. It is likewise not an abuse of discretion when a settlement officer rejects a collection alternative when he finds that the taxpayer is not in current compliance with tax laws. See Balsamo v. Commissioner, T.C. Memo. 2012-109. We hold that the settlement officer here did not abuse her discretion in sustaining the collection action because petitioners provided no information nor were they in current compliance with the tax law for tax years 2010, 2011, 2015, and 2016.

In all other respects, respondent's motion shows that respondent has proceeded as required under section 6330, and nothing submitted by petitioners suggests otherwise. That being so, after considering what has been submitted, we are satisfied that there are no genuine issues of material fact in dispute in this case, and that respondent is entitled to decision as a matter of law. See Rule 121. It follows, and is

ORDERED that respondent's motion is granted. It is further

ORDERED AND DECIDED: that respondent may proceed with collection as determined in the notice.

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED: **JUL 18 2019**