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UNITED STATES TAX COURT
WASHINGTON, DC 20217

CHINYERE EGBE & SHEILA DANIELS EGBE,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 25904-16SL.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	

ORDER AND DECISION

This collection review case is before the Court on respondent's Motion for Summary Judgment, filed June 26, 2019, pursuant to Rule 121 and supported by a Declaration of Officer Jason Alves.[1] Petitioner's Objection to respondent's motion was filed July 26, 2019.

A. Background

The record establishes and/or the parties do not dispute the following. Petitioners resided in the State of New York when they filed the petition.

On May 5, 2015, respondent issued to each petitioner a Notice of Deficiency with respect to tax years 2012 and 2013. The notices of deficiency were delivered by certified mail on May 12, 2015 to each petitioner at their last known address, and were signed for by petitioner Chinyere Egbe. Neither Chinyere Egbe nor Sheila Daniels Egbe filed a timely petition in response to the notices of deficiency.

On December 31, 2015, respondent issued to each petitioner a Final Notice of Intent to Levy and Notice of Your Right to a Hearing with respect to the 2013 tax liability. Petitioners timely filed Form 12153, Request for a Collection Due Process or Equivalent Hearing, which respondent received on January 12, 2016. In the Form 12153 petitioners marked the box indicating that they were challenging a proposed levy or actual levy and also marked the box indicating that their reason for disagreeing with the proposed levy was "I Cannot Pay Balance". In the box below "other" petitioners wrote: "Dispute with IRS Revenue Agent who ignored information to grant me deductible credit allowed by law."

[1]All section references are to the Internal Revenue Code, as amended. All Rule references are to the Tax Court Rules of Practice and Procedure.

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On March 14, 2016, the IRS Appeals Office wrote petitioners to acknowledge receipt of the collection due process (CDP) hearing request. That letter also stated that petitioners had to submit a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, along with pay slips and documentation of expenses, before the Appeals Office would consider their request for a collection alternative.

Settlement Officer Jason Alves (SO Alves) wrote petitioners on August 4, 2016, to inform them that he had been assigned to their case and that he had scheduled a telephone conference for September 20, 2016. He also outlined the issues that he had to consider and enclosed a blank Form 433-A for petitioners to complete. On August 22, 2016, petitioners' representative contacted SO Alves to request additional time to submit the completed Form 433A and financial information. SO Alves extended the due date to September 20, 2016.

On September 20, 2016, SO Alves conducted a telephone conference with petitioners' representative. Petitioners did not provide SO Alves with the requested financial information by that date. However, SO Alves told petitioners' representative that petitioners qualified for a streamlined installment agreement of $275 per month. Petitioners' representative agreed to call him by September 28, 2016, regarding the proposed installment agreement after speaking with petitioners.

Petitioners paid $275 on January 15 and February 10, 2017, under the installment agreement they apparently believed was in effect. But at some point petitioners realized that the agreement was not in effect. Petitioners then terminated their relationship with their representative in part because they believed that their representative had failed to communicate adequately between them and respondent and had not told respondent that petitioners agreed to pay $275 per month.

On November 8, 2016, respondent issued a notice of determination to petitioners. Respondent determined in that notice of determination not to grant petitioners relief from the proposed levy action and to sustain the issuance of the notice of intent to levy. Petitioners filed a timely petition with this Court on December 5, 2016, for review of the notice of determination. In item 1 of their petition they checked the boxes for "Notice of Determination Concerning Collection Action" and "Notice of Determination Concerning Your Request for Relief From Joint and Several Liability". In item 2 they indicated that the date of the Notice(s) they were challenging was November 8, 2016. In item 3 they indicated that the years for which the notice(s) was/were issued were "12/31/2012 and 12/31/2013".

On October 11, 2017, respondent filed a motion for summary judgment. On April 5, 2018, this Court ordered that respondent's motion for summary judgment filed October 11, 2017, be denied. This Court further ordered the case remanded to the IRS Appeals Office for the purpose of affording petitioners a further administrative hearing, and that respondent offer petitioners a supplemental CDP hearing on a reasonably and mutually agreed upon date and time but no later than June 13, 2018. This Court further ordered that this case was dismissed as to tax year 2012 and as to the claim for Relief from a Notice of Determination Concerning Relief From Joint and Several Liability.

On June 13, 2018, SO Alves held a further CDP hearing with petitioners. During this hearing, SO Alves informed petitioners that they were precluded from challenging the underlying liability for tax year 2013 because they had received a valid notice of deficiency on May 12, 2015. SO Alves further informed petitioners that they had accrued an additional liability. The SO offered petitioners an installment agreement based on the increased balance. Petitioners agreed to the proposed installment agreement and, on August 9, 2018, signed a Form 433D, Installment Agreement.

On September 20, 2018, respondent issued to each petitioner a Supplemental Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 related to tax year 2013, determining that "[t]he proposed levy is not sustained because you have agreed to a $600 per month Direct-Debit Installment Agreement."

B. Discussion

1. Summary Judgment

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy, but we may grant summary judgment only if there is no genuine dispute as to any material fact. Rule 121(a), (b); Naftel v. Commissioner, 85 T.C. 527, 528-529 (1985).

This Court may grant summary judgment only if there are no genuine disputes or issues of material fact and the moving party is entitled to judgment as a matter of law. See Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 528-529 (1985). Respondent, as the moving party, bears the burden of proving that no genuine disputes or issues exist as to any material fact and that petitioner is entitled to judgment as a matter of law. FPL Grp., Inc. v. Commissioner, 115 T.C. 544, 559 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. at 529. In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party. FPL Grp., Inc. v. Commissioner, 115 T.C. at 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529. The party opposing summary judgment must set forth specific facts which show that a question of genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988). The party opposing the motion "may not rest upon the mere allegations or denials of his pleading, but * * * must set forth specific facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Where the record viewed as a whole could not lead a reasonable trier of fact to find for the nonmoving party, there is no 'genuine issue for trial'. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Here petitioners did not set forth specific facts showing that there is a genuine issue for trial. The record in this matter reflects that respondent is entitled to summary judgment on the merits of the case.

2. Hearings Under Section 6330 and Underlying Tax Liability

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 the Secretary to send a written notice to the taxpayer of the amount of the unpaid tax and of the taxpayer's right to a section 6330 hearing at least 30 days before the levy is begun.

If a section 6330 hearing is requested, the hearing is to be conducted by the IRS Office of Appeals, and, at the hearing, the officer conducting the conference must verify that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(b)(1), (c)(1). The taxpayer may raise at the hearing "any relevant issue relating to the unpaid tax or the proposed levy". Sec. 6330(c)(2)(A). A taxpayer may challenge his underlying tax liability only if the taxpayer did not receive a notice of deficiency or did not otherwise have an opportunity to dispute such tax liability. Sec. 6330(c)(2)(B).

Petitioners each received a notice of deficiency and therefore they each had a prior opportunity to challenge the underlying tax liability for tax year 2013. See sec. 6330(c)(2)(B). Therefore, the underlying tax liability is not at issue. See Goza v. Commissioner, 114 T.C. at 182. This case was dismissed as to tax year 2012 on April 5, 2018, and therefore the underlying tax liability for that year is not at issue.

C. Conclusion

Petitioners have agreed to and entered into an installment agreement regarding the 2013 tax liability. On September 20, 2018, respondent issued to each petitioner a Supplemental Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 related to tax year 2013, determining that the proposed levy is not sustained based on petitioners' agreement to the installment agreement.

Respondent has established that no genuine dispute of material fact exists and that he is entitled to judgment as a matter of law. See Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). Accordingly, pursuant to Rule 121, summary judgment in favor of respondent is appropriate. In reaching the conclusions described herein, the Court has considered all arguments made, and, to the extent not mentioned above, we find them to be moot, irrelevant, or without merit.

Petitioners are advised that they need not appear at the Court's September 23, 2019, New York, New York trial session because this case will not be called from the calendar, give the dispositive action taken by the Court in this Order and Decision.

Upon due consideration of the foregoing, it is

ORDERED that respondent's motion for summary judgment, filed June 26, 2019, is granted. It is further

ORDERED and DECIDED that respondent's determination set forth in the Supplemental Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated September 20, 2018, is sustained.

(Signed) Peter J. Panuthos
Special Trial Judge

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