

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

ELIZABETH KOHAM,)
)
 Petitioner,)
)
 v.) Docket No. 5227-18 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER AND DECISION

This collection case (consolidated with No. 4986-18L) is before us on the Commissioner’s motion for summary judgment. Because we find that the settlement officer did not abuse her discretion, we grant the motion.

Background

Mr. Bereliani and Ms. Kohanmehr filed joint returns for tax years 2013 and 2014, but they did not pay the liability shown on those returns.¹ In June 2016, Mr. Bereliani and Ms. Kohanmehr sent the Commissioner an Offer in Compromise along with Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and Form 433-B, Collection Information Statement for Businesses.² On the Form 433-A, the taxpayers stated that their monthly income was \$9,868³ and listed patently excessive monthly expenses.⁴ They also listed

¹In the administrative record and in the pleadings, Ms. Kohanmehr has been referred to as Ms. Koham, Ms. Koha, Ms. Kohammehr, Ms. Kohan, Ms. Kohamm Bereliani, Mrs. Berelani, Ms. Koham Bereliani, Ms. Kohanmehr Bereliani, and Ms. Kohanmehr. For purposes of this order, we will refer to her as Ms. Kohanmehr.

²The record does not identify what prompted Mr. Bereliani and Ms. Kohanmehr to send the Commissioner an offer in compromise.

³All monetary amounts are rounded to the nearest dollar.

⁴On their 433-A, Mr. Bereliani and Ms. Kohanmehr listed among monthly expenses: \$7,500 for food, clothing, and miscellaneous, \$9,500 for housing and utilities, and \$1,000 for public transportation. They also listed a \$250,000 student

retirement accounts totaling \$64,883. Mr. Bereliani and Ms. Kohanmehr made a total offer of \$2,500, claiming doubt as to collectability and special circumstances. With the offer in compromise, the taxpayers paid \$686 to cover the down payment and filing fees.

On September 27, 2016, the Commissioner sent the taxpayers a Notice of Federal Tax Lien. The notice listed a total unpaid balance of \$31,117. Mr. Bereliani and Ms. Kohanmehr timely requested a collection hearing in response to the Notice of Federal Tax Lien. In the hearing request, the taxpayers checked the offer in compromise box as their preferred collection alternative. They did not dispute the amount of the underlying liability.

The Commissioner rejected the offer in compromise, reasoning that Mr. Bereliani and Ms. Kohanmehr could pay their liability in full and that their special circumstances did not constitute a hardship. On appeal, the case was assigned to a settlement officer who reviewed Mr. Bereliani and Ms. Kohanmehr's reasonable collection potential. In her review, the settlement officer recalculated the taxpayers' collection potential by adjusting the expenses they had claimed to conform to the maximum allowable expenses. Her analysis showed the reasonable collection potential to be \$321,364. The settlement officer included Mr. Bereliani and Ms. Kohanmehr's retirement accounts in the calculation because "neither is near retirement age." She also reduced the total tax liability to \$21,836, to account for a 2016 refund that had been applied to the taxpayers' liability. The final calculation concluded that Mr. Bereliani and Ms. Kohanmehr could make a monthly payment of \$987. The settlement officer rejected the \$2,500 offer in compromise.

The settlement officer relayed this information to Mr. Bereliani and Ms. Kohanmehr's attorney during the collection hearing on November 29, 2017. The settlement officer also offered the taxpayers an installment agreement as a collection alternative.

In December 2017, the settlement officer mailed the taxpayers a letter with Form 12257, Summary Notice of Determination, Waiver of Right to Judicial Review of a Collection Due Process Determination, Waiver of Suspension of Levy

loan debt as a monthly expense, labeling it as a total debt, but offering no information about the monthly loan expense.

Action, and Waiver of Periods of Limitation in Section 6330(e)(1)⁵ and Form 433-D, Installment Agreement. The installment agreement offered Mr. Bereliani and Ms. Kohanmehr monthly payments of \$332. In the letter, the settlement officer requested that Mr. Bereliani and Ms. Kohanmehr sign and return the installment agreement by December 26, 2017. The Commissioner never received the signed installment agreement.

On February 13, 2018, the Commissioner issued Mr. Bereliani and Ms. Kohanmehr a Notice of Determination sustaining the Notice of Lien Filing. The Notice of Determination rejected the offer in compromise, stating “Special circumstances were considered but did not warrant acceptance of the offer.” The Notice also stated that the Commissioner offered the taxpayers a streamlined installment agreement, but the taxpayers did not respond by signing and returning the documents.

In March 2018, Mr. Bereliani and Ms. Kohanmehr timely filed petitions with this Court. We consolidated the cases. The taxpayers’ petitions claimed the Commissioner erred when he denied the offer in compromise “on the grounds the amount in issue that was owed was too small for consideration for an offer”.

On July 11, 2019, the Commissioner filed a motion for summary judgment. The Commissioner argued that the settlement officer did not abuse her discretion when she rejected the offer in compromise because the taxpayers’ “reasonable collection potential (\$321,361) was significantly higher than the outstanding tax liability (\$35,117).” Mr. Bereliani and Ms. Kohanmehr filed a response objecting to the motion for summary judgment. The response claimed the settlement officer abused her discretion when she made a “blanket rejection” of the offer in compromise.

Discussion

The issue before the Court is whether we should grant the Commissioner’s motion for summary judgment. Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in a controversy. We may grant summary judgment only if there is no genuine dispute of material

⁵Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

fact.⁶ The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute of material fact.⁷ When a motion for summary judgment is properly made and supported, the nonmoving party may not rest upon mere allegations or denials of the pleading, but must set forth specific facts showing a genuine dispute.⁸

Section 6330(d)(1) grants this Court jurisdiction to review the Commissioner's collection determinations.⁹

The underlying tax liabilities in this case are not in dispute. In a collection case, the taxpayer may challenge the existence or amount of the underlying liability if the taxpayer did not have a previous opportunity to dispute the liability.¹⁰ However, the taxpayer is precluded from raising the underlying liability if he already had a prior opportunity.¹¹

When the underlying liability is not at issue, this Court reviews the Commissioner's collection determination for an abuse of discretion.¹² When making a determination, the Commissioner must (1) verify that 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 the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.¹³ To prove abuse of discretion, the taxpayer must show the Commissioner's decision was arbitrary, capricious, or without sound basis in law or fact.¹⁴

The Commissioner complied with all of these requirements in making his determination.

⁶Rule 121(b).

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

⁸Rule 121(d).

⁹Sec. 6330(d)(1).

¹⁰Sec. 6330(c)(2)(B).

¹¹Bell v. Commissioner, 126 T.C. 356, 358 (2006).

¹²Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 182 (2000).

¹³Sec. 6330(c)(3).

¹⁴Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

(1) The settlement officer reviewed the administrative record and verified that legal and procedural requirements were met.

(2) The settlement officer also considered issues raised by Mr. Bereliani and Ms. Kohanmehr, including collection alternatives. The settlement officer examined the offer in compromise and concluded that it was unreasonable. The amount the taxpayers offered (\$2,500) was a mere fraction of the amount the settlement officer determined to be the reasonable collection potential (\$312,361). The Commissioner may reject an offer in compromise when the taxpayer's reasonable collection potential is greater than the amount the taxpayer proposes to pay.¹⁵ The settlement officer could not consider this lower offer unless Mr. Bereliani and Ms. Kohanmehr showed special circumstances.¹⁶ But they did not present evidence of special circumstances. The settlement officer considered Mr. Bereliani and Ms. Kohanmehr's payment potential, applied the highest allowable standard expenses, and calculated their minimum monthly payment. The settlement officer calculated an installment payment for less than the minimum monthly payment amount. She offered Mr. Bereliani and Ms. Kohanmehr an installment agreement. They did not respond to the offer.

(3) The lien was no more intrusive than necessary. Mr. Bereliani and Ms. Kohanmehr did not demonstrate that the proposed collection was unduly intrusive. The settlement officer found the lien balanced the efficient collection of taxes with the taxpayers' concerns.

Conclusion

There is no genuine dispute as to any material fact, 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 July 11, 2019, is granted. It is further

¹⁵See Johnson v. Commissioner, 136 T.C. 475, 486 (2011), aff'd, 502 F. App'x 1 (D.C. Cir. 2013).

¹⁶Murphy v. Commissioner, 125 T.C. 301, 315 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006).

ORDERED AND DECIDED that the Commissioner's Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code, dated February 13, 2018, is sustained.

(Signed) Ronald L. Buch
Judge

Entered: **AUG 23 2019**