

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

DAVID M. MARSHALL,)	
)	
Petitioner,)	
)	
v.)	Docket No. 7030-19 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	

ORDER AND DECISION

This case is before the Court on respondent’s Motion for Summary Judgment, filed pursuant to Rule 121.¹ Petitioner filed a Response in opposition to respondent’s motion. Respondent’s motion was called for hearing in New York, New York, on December 10, 2019. Both parties appeared and were heard. As explained below, the Court will grant respondent’s motion.

Section 6330 prescribes procedures for administrative and judicial review of respondent’s proposed levy actions. In rendering an administrative determination in a collection review proceeding under section 6330, the IRS Office of Appeals (Appeals Office) must verify that the requirements of any applicable law and administrative procedure have been met in processing the case. Sec. 6330(c)(1). The Appeals Office also must consider any issues raised by the taxpayer, including offers of collection alternatives, appropriate spousal defenses, and challenges to the appropriateness of the collection action. Sec. 6330(c)(2)(A). A taxpayer may challenge the existence or amount of his or her underlying tax liability 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). Finally, the Appeals Office must consider whether the collection action balances the need for efficient collection against the taxpayer’s concern that collection be no more intrusive than necessary. Sec. 6330(c)(3)(C).

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

If the taxpayer's underlying tax liability is not in dispute, as is the case here, we review respondent's determination for abuse of discretion. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). An abuse of discretion occurs if the Appeals Office exercises its discretion "arbitrarily, capriciously, or without sound basis in fact or law." Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b). Respondent's Motion for Summary Judgment is well founded based on the averments therein and the declarations and related exhibits attached thereto. The record reflects there is no dispute as to a material fact and that respondent is entitled to judgment as a matter of law sustaining the notice of determination upon which this case is based.

Respondent duly issued a notice of intent to levy to petitioner in respect of his unpaid tax liabilities for the taxable years 2013, 2014, and 2015. In response, petitioner timely requested an administrative hearing under section 6330 and indicated that he was seeking an installment agreement or an offer in compromise. The Appeals Office then directed petitioner to submit a completed Form 433-A, Collection Information Statement, so that the Appeals Office could evaluate his eligibility for an alternative to the proposed levy action. Petitioner eventually submitted a Form 433-A to the Appeals Office reporting monthly income of \$21,666 offset entirely by monthly expenses of \$21,700. He did not, however, provide any records or documents to substantiate his monthly expenses.

On that record, the Appeals Office issued a notice of determination to petitioner sustaining the proposed levy action. Petitioner invoked the Court's jurisdiction by filing a timely petition for review under section 6330(d)(1).

It is well settled that the Appeals Office is justified in rejecting a proposed collection alternative, such as an installment agreement or an offer in compromise, if the taxpayer fails to submit requested financial information or is not in compliance with Federal tax laws. See, e.g., Pough v. Commissioner, 135 T.C. 344, 351-352 (2010). The record shows that petitioner did not provide the financial information that the Appeals Office needed to evaluate his eligibility for a collection alternative.

The Appeals Office otherwise properly verified that the requirements of applicable laws and administrative procedures were met in the processing of petitioner's case and that the proposed levy balances the Government's need for the efficient collection of taxes with petitioner's concerns that the collection action be no more intrusive than necessary. In sum, the Appeals Office did not abuse its discretion in this case.

Upon due consideration and for cause, it is

ORDERED that respondent's Motion for Summary Judgment, filed September 19, 2019, is granted. It is further

ORDERED AND DECIDED that respondent's Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated March 28, 2019, upon which this case is based, is sustained.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

ENTERED: **DEC 11 2019**