

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SNEEDS FARM, INC.,)
)
Petitioner(s),) **BD**
)
v.) Docket No. 24671-18 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 on November 20, 2019. Petitioner's response to respondent's motion was filed December 11, 2019. Giving due regard to the representations contained in the parties' submissions, the Court is satisfied that respondent's motion can be resolved without the need for a hearing. See Rule 50(b)(3). The undisputed facts relevant to the disposition of respondent's motion are drawn from the parties' submissions and summarized below.

In a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated November 20, 2018 (notice), respondent determined that a proposed levy is an appropriate collection action with respect to petitioner's outstanding U.S. Corporation income tax liability for taxable year ended October 31, 2017 (underlying liability). The underlying liability is based on petitioner's 2017 tax return, an addition to tax for failure to make estimated tax payments, an addition to tax for late payment, and interest. Petitioner did not at the administrative hearing and does not in this proceeding challenge the existence or the amount of the underlying liability.

If, as here, the validity of the underlying liability is not at issue in a case,

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

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then the Court will review respondent's determination for abuse of discretion. See Giamelli v. Commissioner, 129 T.C. 107, 111 (2007). That is, we review the determination to see if it was arbitrary, capricious, or without sound basis in fact or law. Id.

According to the notice, petitioner requested an installment agreement of \$5,000 per month to pay the underlying liability totaling \$111,039.94 as of July 9, 2018. Taking into account the financial information that petitioner provided, the settlement officer concluded that petitioner did not qualify for an installment agreement because it had sufficient equity to fully pay the underlying liability, and should either sell assets or take out a loan. Specifically, petitioner had total assets of \$5,562,524 and total liabilities of \$593,736, reflecting a net equity in assets of almost \$5 million. Petitioner does not dispute these facts.

The Commissioner is authorized “to enter into written agreements allowing taxpayers to pay tax in installment payments if he deems that the agreement will facilitate full or partial collection of such liability.” Thompson v. Commissioner, 140 T.C. 173, 179 (2013) (quoting section 6159(a). The decision to accept or reject installment agreements lies within the discretion of the Commissioner. Sec. 301.6159-1(a), (c)(1)(i), Proced. & Admin. Regs. The Court does not normally make an independent determination of what would be an acceptable alternative. Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff'd 469 F.3d 27 (1st Cir. 2006). If Appeals or settlement officers follow all statutory and administrative guidelines and provide a reasoned and balanced decision, the Court will not reweigh the equities. Thompson v. Commissioner, 140 T.C. at 179.

IRM pt. 5.15.1.4(5) states in relevant part: “If taxpayers have equity in assets that could be used to fully or substantially satisfy balance due accounts explore the possibility of liquidating or borrowing against those assets, unless factors such as advanced age, ill-health, or other special circumstances are determined to prevent the liquidation of assets”. The Court has routinely held that an Appeals officer does not abuse her discretion when she rejects an installment agreement because a taxpayer refuses to liquidate assets to satisfy its tax liabilities. See, for e.g., Tillery v. Commissioner, T.C. Memo. 2015-170, at *6 (holding settlement officer acted within the bounds of her discretion in rejecting installment agreement); Bibby v. Commissioner, T.C. Memo. 2013-81 (holding that an Appeals officer did not abuse his discretion where the Appeals officer made clear that an installment agreement depended upon the liquidation of three real properties and the taxpayer would not agree to that condition precedent); Lipson v. Commissioner, T.C. Memo. 2012-252, at *9 (holding that the settlement officer acted within her discretion in

rejecting an installment agreement where the taxpayer owned investments totaling \$406,805 and noting that taxpayers do not generally qualify for an installment agreement if balance due accounts can be fully or partially satisfied by liquidating assets); see also, McCarthy v. Commissioner, T.C. Memo. 2013-214, at *4 (holding that the Appeals Officer acted within her discretion by requiring the taxpayer to borrow against or liquidate his significant equity in various assets before she would consider his proposed installment agreement.

Petitioner owed \$111,039.94 in unpaid tax and penalties and had almost \$5 million of net equity in assets. Petitioner made no attempts to either sell assets or borrow against its assets. The settlement officer here in this case thus acted within the bounds of her discretion in rejecting the installment agreement.

Otherwise, the record shows that the Appeals Office properly verified that the requirements of all applicable laws and administrative procedures were met in the processing of petitioner's case and that the collection action 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. The undisputed facts show that respondent is entitled to decision as a matter of law. Disposition of this matter upon summary adjudication is therefore appropriate. See Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994).

Premises considered, it is

ORDERED that respondent's Motion for Summary Judgment, filed November 20, 2019, 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: **FEB 11 2020**