

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

GARY L. SHAW,)
)
Petitioner,)
)
v.) Docket No. 25954-17 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER AND DECISION

This collection review case is before the Court on respondent’s motion for summary judgment, with a supporting declaration, filed pursuant to Rule 121.¹ The Internal Revenue Service (IRS) Office of Appeals (Appeals Office) issued a notice of determination and supplemental notice of determination to petitioner sustaining a proposed levy action to collect his unpaid Federal income taxes for taxable years 2014 and 2015 (years in issue). Although the Court directed petitioner to file a response to respondent’s motion for summary judgment, he has failed to do so. As explained in detail below, we will grant respondent’s motion.

Background

Petitioner filed Federal income tax returns for the years in issue and failed to remit full payment of taxes reported to be due. Respondent subsequently assessed the taxes, additions to tax for failure to timely pay tax due under section 6651(a)(2), and interest, and issued notices and demand for payment to petitioner. Petitioner failed to remit full payment.

On May 4, 2017, respondent issued to petitioner a Notice of Intent to Levy and Notice of Your Right to a Hearing for the years in issue. The notice referred specifically to petitioner’s unpaid taxes of \$1,772.76 and \$424.05 for the taxable years 2014 and 2015, respectively. Petitioner timely submitted to the Appeals

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.

Office a Form 12153, Request for a CDP or Equivalent Hearing, in which he checked the boxes for “Offer in Compromise” and “I Cannot Pay Balance”.

The Appeals Office conducted an administrative hearing and requested that petitioner provide verification of his gross monthly income, substantiate his living expenses, and submit a Form 656, Offer in Compromise, and a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals. Although the parties exchanged voicemail messages and the Appeals Office provided directions to petitioner in a series of letters, they did not speak directly or meet in person. Petitioner did not submit the information requested by the Appeals Office.

On November 8, 2017, the Appeals Office issued to petitioner a notice of determination sustaining the proposed levy collection action. Petitioner invoked the Court’s jurisdiction by filing a timely petition for review of the notice of determination under section 6330(d). Petitioner alleged in relevant part in the petition that he was not given an adequate opportunity to respond to the Appeals Office during the administrative hearing process.

It is worth noting here that the petition included allegations concerning a notice of deficiency that the IRS had issued to petitioner on August 7, 2017, determining an income tax deficiency of \$4,278 in his Federal income tax for 2015. By Order dated March 12, 2018, the Court granted respondent’s motion to dismiss for lack of jurisdiction to strike as to the notice of deficiency for 2015 on the ground that the petition was not filed within the 90-day period prescribed in section 6213(a). Respondent acknowledged in his motion to dismiss that the proposed levy action at issue in this case does not encompass the 2015 income tax deficiency of \$4,278.

By Order dated July 30, 2019, the Court granted respondent’s motion to remand the case to the Appeals Office for further consideration. The Appeals Office conducted a supplemental administrative hearing and pointed out to petitioner that he had failed to file Federal income tax returns for the taxable years 2012, 2016, 2017, and 2018, and requested that he submit copies of those returns. On September 10, 2019, the Appeals Office held a supplemental administrative hearing with petitioner by telephone. Thereafter, on September 13, 2019, the Appeals Officer sent a letter to petitioner identifying the financial information and tax returns that petitioner needed to submit so that the Appeals Office could evaluate his eligibility for an offer in compromise. Despite extensions of time to comply with that request, petitioner failed to submit the requested information or

the unfiled tax returns. On November 18, 2019, the Appeals Office issued to petitioner a supplemental notice of determination sustaining the proposed levy action (supplemental notice of determination).

Discussion

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 declaration and exhibits attached thereto. We conclude that 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 and supplemental notice of determination upon which this case is based.

Section 6331(a) authorizes the Commissioner to levy upon property and property rights of a person liable for taxes who fails to pay those taxes within 10 days after notice and demand for payment. Section 6331(d) provides that the levy authorized by section 6331(a) may be made with respect to any unpaid tax only after the Commissioner has notified the person in writing of his intention to make the levy at least 30 days before any levy action is begun.

Section 6330 provides procedures for administrative and judicial review of respondent's levy actions. In short, any person receiving a notice of proposed levy may request an administrative hearing with respondent's Appeals Office. The Appeals Office is obliged to verify that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(c)(1), (3)(A). The person may raise at the administrative hearing any relevant issue relating to the unpaid tax or the collection action, including appropriate spousal defenses, challenges to the appropriateness of the collection action, and offers of collection alternatives. Sec. 6330(c)(2)(A), (3)(B). The person may also raise at the hearing challenges to the existence or amount of the underlying liability if the person did not receive a statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such liability. Sec. 6330(c)(2)(B).

If the person's underlying tax liability is not in dispute, as is the case here, we review the Appeals Office's administrative 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).

The record shows that petitioner is not in compliance with filing requirements for the taxable years 2012, 2016, 2017, and 2018, and that he failed to produce the information that the Appeals Office needed to evaluate his eligibility for a collection alternative. It is well settled that the Appeals Office is justified in rejecting a proposed collection alternative if the person 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 (2010). Moreover, it is not an abuse of discretion for the Appeals Office to decline to consider an offer in compromise where the person fails to propose a specific collection alternative. See Kendricks v. Commissioner, 124 T.C. 69, 79 (2005).

The Appeals Office properly verified that the requirements of any applicable law and administrative procedure were met in the processing of petitioner's case and that the proposed levy balances the Government's interest in 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.

Premises considered, it is

ORDERED that respondent's Motion for Summary Judgment, filed December 17, 2019, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the proposed levy action for taxable years 2014 and 2015 as determined in the notice of determination and supplemental notice of determination upon which this case is based.

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

ENTERED: **FEB 19 2020**