UNITED STATES TAX COURT
WASHINGTON, DC 20217

MELISSA FEATHERSTON LECOUR & GLENN LECOUR,	)	
Petitioner(s),	)	
v.	)	Docket No. 22905-18 L.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

This collection due process (CDP) case is before the Court on respondent's Motion for Summary Judgment, filed May 30, 2019, pursuant to Rule 121 and supported by a Declaration of Appeals Officer Thomas Wroble (AO Wroble).[1] On June 13, 2019, petitioners filed an Objection to respondent's motion. Thereafter, on September 6, 2019, respondent filed a reply to petitioners' objection, and on October 7, 2019, petitioners filed a response to respondent's reply.

Background

The following uncontested information, as relevant herein, is derived from the parties' filings. Petitioners resided in Missouri when they filed the petition.

Petitioners filed their 2013 and 2014 joint Forms 1040, U.S. Individual Income Tax Return, on January 25, 2016, and January 28, 2016, respectively. Respondent assessed the amounts he seeks to collect in this case on the basis of petitioners' 2013 and 2014 returns. Petitioners have not paid the amount respondent seeks to collect.

On April 11, 2018, the IRS issued to petitioners a Letter 1058-A, Final Notice--Notice of Intent to Levy and Notice of Your Rights to a Hearing, reflecting unpaid balances of $34,453 and $62,252, for 2013 and 2014, respectively.

[1]Unless 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. All monetary amounts are rounded to the nearest dollar.

SERVED Dec 30 2019

On May 14, 2018, petitioners' counsel timely submitted a Form 12153, Request for Collection Due Process or Equivalent Hearing, in response to the notice of intent to levy. On the Form 12153 petitioners' counsel checked the boxes for "Installment Agreement", "Offer in Compromise", and "I Cannot Pay Balance". In the space provided within the "Other" box, petitioners' counsel stated: "The taxpayers cannot pay the IRS balance due."

On June 19, 2018, AO Wroble sent petitioners a Letter 4837, Appeals Received Your Request for a Collection Due Process Hearing. The letter scheduled a telephone CDP hearing for July 18, 2018, with respect to the notice of intent to levy. The Letter 4837 states that petitioners were to submit, among other things, a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals.

On July 16, 2018, AO Wroble and petitioners' counsel spoke via telephone. During the phone call, petitioners' counsel requested an extension of time to provide the information requested in the Letter 4837. AO Wroble and petitioners' counsel agreed to postpone the CDP hearing to August 8, 2018.

On August 6, 2018, petitioners' counsel faxed a letter to AO Wroble that stated, among other things, that petitioners anticipate proposing a temporary monthly payment plan to allow them to restructure their personal living expenses to arrange for a more permanent payment plan. Attached to the letter was a completed Form 433-A.

On August 7, 2018, petitioners' counsel hand-delivered a package to AO Wroble to supplement the August 6, 2018 fax. The package included petitioners' Form 433-A and supporting documentation.

On August 8, 2018, AO Wroble held the CDP hearing with petitioners' counsel. Petitioners' counsel stated that petitioners sought an installment agreement with payments of $500 per month for 24 months and payments of $1,500 per month following the initial 24-month period.

On August 24, 2018, AO Wroble reviewed all financial information and determined that petitioners could pay more than their offered installment agreement amount of $500 per month for 24 months.

On August 27, 2018, AO Wroble proposed an installment agreement with payments of $1,051 per month for 12 months, and payments of $2,433 per month after the initial 12-month period. In reaching this proposed installment agreement, AO Wroble concluded that: (1) petitioners were allowed a one-year period to adjust their housing and car expenses; (2) petitioners' monthly income based on their 2017 tax return was $10,591; (3) the $2,000 per month secured debt expense was disallowed as it was actually for credit card debt (which is unsecured debt); (4) the $500 per month state tax expense was disallowed because it could be paid in full by petitioners' savings accounts; and (5) the $500 per month other expense was disallowed due to lack of substantiation. Petitioners' counsel agreed to discuss the proposed

installment agreement with petitioners to respond to AO Wroble by September 14, 2018. Petitioners' counsel did not respond.

On October 11, 2018, the IRS issued Notices of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code sustaining a proposed levy to collect petitioners' Federal income tax liabilities for 2013 and 2014. Petitioners timely filed a petition requesting review of the notices of determination asserting that the IRS did not properly calculate petitioners' ability to pay their outstanding Federal tax liabilities and that "[t]he IRM specifically directs that respondent shall allow a taxpayer one year to reorganize living expenses to meet petitioners' allowable personal living expense standards." Petitioners further allege that "Respondent's allowable personal living expense calculation does not permit respondent such one year period, for all claimed expenses."

Discussion

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Florida Peach Corp. v . Commissioner, 90 T.C. 678, 681 (1988). The Court may grant summary judgment when there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The moving party bears the burden of showing that there is no genuine issue of material fact. Sundstrand Corp. v. Commissioner, 98 T.C. at 520. In deciding whether to grant summary judgment, we view the factual materials and the inferences drawn from them in the light most favorable to the nonmoving party. Id. 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).

In reviewing the IRS determination in a CDP case, if the validity of the underlying liability is at issue, the Court reviews the IRS' determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Petitioners did not challenge their underlying liability during the CDP hearing, and they have not challenged it in their petition. This issue is therefore deemed conceded. See Rule 331(b)(4) ("Any issue not raised in the assignments of error shall be deemed to be conceded.").

Where (as here) the underlying liability is not properly at issue, the Court reviews the IRS determination only for abuse of discretion. Goza v. Commissioner, 114 T.C. at 182. Abuse of discretion exists when a determination is arbitrary, capricious or without sound basis in fact or law. See Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006).

In deciding whether the SO abused his discretion in sustaining the proposed collection action, we consider whether the SO: (1) properly verified that the requirements of any applicable law or administrative procedure had been met; (2) considered any relevant issues petitioner raised; and (3) determined whether the "proposed collection action balances the need for the efficient collection of taxes with the legitimate concern * * * that any collection action be no more intrusive than necessary." Sec. 6330(c)(3).

The record shows that the SO verified that the requirements of applicable law and administrative procedure were met. The SO stated in his case activity report that he had reviewed petitioners' account transcripts and confirmed that assessment were properly made. Petitioners did not allege in their petition that any assessment was improper, and this issue is therefore deemed conceded. See Rule 331(b)(4); Pierson v. Commissioner, 115 T.C. 576, 580 (2000) (deeming conceded issues not raised in the taxpayer's petition).

Section 6159 authorizes the Commissioner to enter into written agreements allowing taxpayer to pay tax installment payments if he deems that the "agreement will facilitate full or partial collection of such liability." The decision to accept or reject installment agreements lies within the discretion of the Commissioner. Thompson v. Commissioner, 140 T.C. 173, 179 (2013); sec. 301.6159-1(a), (c)(1)(i), Proced. & Admin. Regs. This Court gives due deference to the determination that the IRS makes in the exercise of this discretionary authority. See Woodral v. Commissioner, 112 T.C. 19, 23 (1999); Marascalco v. Commissioner, T. C. Memo. 2010-130, aff'd, 420 F. App'x 423 (5th Cir. 2011). We will not substitute our judgment for that of the IRS, recalculate a taxpayer's ability to pay, or independently determine what would have been an acceptable collection alternative. See O'Donnell v. Commissioner T.C. Memo. 2013-247; see also Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Speltz v. Commissioner, 124 T.C. 165, 179-180 (2005), aff'd, 454 F.3d 782 (8th Cir. 2006). If the AO followed all statutory and administrative guidelines and provided a reasoned, balanced decision, the Court will not reweigh the equities. Thompson v. Commissioner, 140 T.C. at 179 ; cf. Gurule v. Commissioner, T.C. Memo. 2015-61 (the Court may consider whether the Appeals officer's decision to reject an installment agreement was the result of a failure to properly consider the taxpayer's financial information in the record).

In their Objection and Response petitioners point to IRM pt. 5.14.1.4.1(2) (Jan. 1, 2016), which states as follows:

> One-Year Rule: Taxpayers who cannot full pay their accounts within six years may be given up to one year to modify or eliminate excessive necessary expenses. In some cases, by modifying or eliminating some conditional expenses, a taxpayer may be able to full pay the liability plus accruals within the six year limit. This would enable a taxpayer to retain some conditional expenses under the Six-Year rule. The taxpayer does not have to qualify for the Six-Year rule in order to apply the One-Year rule.

Petitioners argue that AO Wroble abused his discretion by not allowing the full amount of all expenses for the first year of petitioners' proposed installment agreement. Petitioners specifically dispute that the AO did not allow the claimed expenses for food/clothing, vehicle operating, life insurance, secured debts, unsecured debts, state taxes, and other for the one-year reorganization period.

We have held that an Appeals officer properly exercises his or her discretion by adhering to IRM provisions governing acceptance of collection alternatives. See Veneziano v. Commissioner, T.C. Memo. 2011-160; Etkin v. Commissioner, T.C. Memo. 2005-245;

Schulman v. Commissioner, T.C. Memo. 2002-129. The IRM provides that settlement officers should allow taxpayers the national standard amount for their family size without questioning the amount actually spent. See IRM pt. 5.15.1.9(2) and (7) (Aug. 29, 2018). For housing, utilities, and vehicle expenses, taxpayers are allowed the local standard amounts unless they have claimed lesser amounts. See IRM pt. 5.15.1.10(1)(a.) and (b.). The IRM further advises that all deviations from the national and local standards must be "verified, reasonable and documented in the case history." See IRM pts. 5.15.1.9(4), and 5.15.1.10(1)(a.) and (b.).

Although we do not analyze each individual claimed expense in detail here, it is unclear to the Court whether the AO used appropriate amounts as allowed by the 2018 national and local standards for petitioners' family size when calculating their allowable monthly expenses. In addition, the AO's proposed installment agreement amount for the initial 12-month period appears to exceed petitioners' calculated ability to pay when considering the AO's allowance of the full amount claimed for housing and vehicle expenses.

Contrary to IRM guidelines, the Notice of Determination does not supply, and respondent's motion and supporting declaration do not elucidate, any explanation for (1) the amounts used when calculating petitioners' allowable expenses and whether they deviate from the local and national standards, or (2) the calculation of petitioners' ability to pay for the initial 12-month period. Because the record demonstrates a departure from administrative guidelines without a full and clear explanation of the AO's reasoning, there is a genuine issue of fact in this case and summary judgment is inappropriate.

Upon due consideration of the foregoing, it is

ORDERED that respondent's Motion For Summary Judgment, filed May 30, 2019, is denied.

(Signed) Peter J. Panuthos
Special Trial Judge

Dated: Washington, D.C.
December 30, 2019