

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

DANIEL L. JOHNSON,)	
)	
Petitioner,)	
)	
v.)	Docket No. 7249-19 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER & DECISION

This is a collection due process (“CDP”) case, in which petitioner Daniel L. Johnson challenges a determination by the Office of Appeals (“Appeals”) of the Internal Revenue Service (“IRS”) to sustain the agency’s filing of a notice of lien against Mr. Johnson for income tax and penalties for 2000, 2002, 2003, and 2004, as stated on Appeals’ “Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330”, dated April 3, 2019. The Commissioner has filed a motion for summary judgment (Doc. 7), which we will grant.

Background

The Commissioner’s motion for summary judgment shows the following facts:

For 2000, 2002, 2003, and 2004, Mr. Johnson failed to file timely returns. The IRS prepared substitutes for return (“SFRs”) pursuant to section 6020(b), issued notices of deficiency, assessed the resulting tax, and issued notice and demand for payment. (Doc. 7, Exs. 1-4.) When Mr. Johnson did not pay those liabilities, the IRS filed a notice of Federal Tax lien and served on Mr. Johnson a notice of that filing and of his right to a CDP hearing (Decl. Ex. D). Mr. Johnson requested a CDP hearing on Form 12153, and on his request he checked the boxes indicating that he wanted an installment agreement as a collection alternative and wanted lien withdrawal (Decl. Ex. E). In support of that request, Mr. Johnson

submitted bank statements and financial information on Form 433-A, and offered monthly payments of \$750. Appeals scheduled a telephonic CDP hearing and requested additional documentation (Decl. Exs. F, H). Using Mr. Johnson's information from his Form 433-A, Appeals determined that he has the ability to make payments of \$2,898 per month toward his liabilities (Dec. Ex. J, p. 2). Appeals thereafter communicated with Mr. Johnson by mail and by telephone, making multiple requests for additional documentation of Mr. Johnson's financial situation (Decl. Exs. B, C); but despite several letters from Appeals, Mr. Johnson did not provide the additional information requested or participate in the CDP hearing (Dec. Exs. A, J). On April 3, 2019, IRS Appeals issued to Mr. Johnson a "Notice of Determination Concerning Collection Action under Section 6320 and/or 6330" dated April 3, 2019, sustaining the lien filing for the four years at issue (Dec. Ex. A).

On May 7, 2019, Mr. Johnson timely mailed a petition (Doc. 1) to this Court, seeking our review of IRS Appeals' determination. On November 13, 2019, the Commissioner moved for summary judgment (Doc. 7). By order (Doc. 9) dated November 14, 2019, the Court ordered Mr. Johnson to file a response to the Commissioner's motion "no later than December 6, 2019". In that order the Court explained some of the requirements for opposing summary judgment and stated:

If Mr. Johnson disagrees with the facts set out in paragraphs 5-17 of the Commissioner's motion for summary judgment, then his response should point out the specific facts in dispute. **Mr. Johnson's response should state, by number, any assertion with which they disagree, should explain the reason for his disagreement, and should cite whatever evidence supports his position.** If Mr. Johnson disagrees with the Commissioner's argument as to the law (in paragraphs 17-30 of the Commissioner's motion), then his response should also set out his position on the disputed legal issues. Q&As that the Court has prepared on the subject "What is a motion for summary judgment? How should I respond to one?" are available at the Court's website and are printed on the page attached to this order.

Our order also stated:

If Mr. Johnson is unsure how to proceed, he should promptly initiate a telephone conference with the Court and the Commissioner by placing a call to the Chambers Administrator of the undersigned judge (at 202-521-0850).

Additionally, the order explained to Mr. Johnson that “If the adverse party [i.e., Mr. Johnson] does not so respond [to a motion for summary judgment], then a decision, if appropriate, may be entered against such party”. Mr. Johnson’s response was due on December 6, 2019. As of this date, the Court has received no response from Mr. Johnson to the Commissioner’s motion for summary judgment. When this case was called from the calendar on January 13, 2020, at the Court’s trial session in Washington, D.C., Mr. Johnson did not appear.

Discussion

On its face the Commissioner’s motion is well-founded; its factual assertions are undisputed; its legal arguments are sound; and it shows that Appeals did not abuse its discretion in sustaining the lien filing. Moreover, it is not an abuse of discretion for Appeals to decline to accept an alternative when a taxpayer fails to provide financial information to support the alternative, see Huntress v. Commissioner, T.C. Memo. 2009-161. We will therefore grant respondent’s motion. It is

ORDERED that the Commissioner’s motion for summary judgment is granted, both for the reasons stated in the Commissioner’s motion and, in the alternative, for the reason that Mr. Johnson failed to comply with the Court’s order that he respond to the motion (see Rule 121(d). Further in the alternative, we would dismiss this case pursuant to Rule 123(b) for lack of prosecution in view of petitioner’s failure to comply with our order of November 14, 2019, and his failure to appear on January 13, 2020. It is further

ORDERED AND DECIDED that the Commissioner may proceed with the collection of petitioner’s Federal income taxes for tax years 2000, 2002, 2003, and 2004 as described in the “Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330” dated April 3, 2019.

**(Signed) David Gustafson
Judge**

ENTERED: **JAN 17 2020**

SERVED Jan 17 2020