

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

DANIELLE BROWN, )  
)  
Petitioner(s), )  
)  
v. ) Docket No. 11529-19 L.  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent )

**ORDER AND DECISION**

This case is set for trial at the Court’s session in Los Angeles, California, beginning June 15, 2020. On January 23, 2020, respondent filed a motion for summary judgment seeking to have the Court sustain respondent’s Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 (notice of determination) dated June 3, 2019. The notice of determination sustained notice of Federal tax lien (NFTL) filing issued with respect to petitioner’s unpaid tax liabilities for 2012 and 2014. The Court ordered petitioner to respond to respondent’s motion by February 7, 2020. To date the Court has not received a response from petitioner.

There are no genuine issues of material fact in this case and we conclude that respondent is entitled to judgment as a matter of law as provided herein.

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.

**Background**

Petitioner resided in California when she timely filed her petition.

Petitioner’s 2012 and 2014 tax liabilities stem from self-assessments on her income tax returns. On May 22, 2018, respondent sent petitioner a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320.

Respondent received petitioner's timely mailed Form 12153, Request for a Collection Due Process (CDP) or Equivalent Hearing, on June 19, 2018. On Form 12153, petitioner's power of attorney requested that the NFTL be discharged. Her power of attorney indicated that petitioner would be filing corrected and amended Federal income tax returns, resulting in no tax liabilities. Petitioner did not request a collection alternative.

Petitioner's CDP hearing was assigned to a settlement officer who verified that the underlying tax liabilities for 2012 and 2014 had been properly assessed. On September 21, 2018, the settlement officer sent petitioner and her power of attorney a letter scheduling a CDP hearing by telephone for January 10, 2019. The letter requested that petitioner provide amended Federal income tax returns for 2012 and 2014 and financial documentation if she wished to have the settlement officer consider any collection alternatives. The letter also informed petitioner that a lien discharge was only available if she was attempting to sell any real estate and only if there was not enough equity to fully pay the balance of her tax liabilities.

On January 29, 2019, the settlement officer sent petitioner and her power of attorney a letter explaining that he was rescheduling the CDP hearing until May 2, 2019, because of the partial government shutdown. The letter also asked that petitioner submit the documentation requested previously. On May 2, 2019, neither petitioner nor her power of attorney participated in the scheduled CDP hearing. On the same day, the settlement officer sent petitioner and her power of attorney a letter extending the deadline until May 16, 2019, to submit the requested documentation.

On May 14, 2019, the settlement officer spoke with petitioner's power of attorney who told the settlement officer that petitioner had filed her amended Federal income tax returns. The settlement officer told petitioner's power of attorney that neither he nor the Internal Revenue Service (IRS) had received petitioner's amended Federal income tax returns. The next day petitioner's power of attorney informed the settlement officer that petitioner's amended Federal income tax returns had been filed with an IRS revenue agent and those returns showed a balance due. The settlement officer never received copies of petitioner's amended returns, and petitioner did not provide any of the requested financial documentation.

On June 3, 2019, respondent issued the notice of determination. The settlement officer stated that he verified the requirements of applicable law and

administrative procedure had been followed and confirmed that the NFTL filing was properly issued.

### Discussion

Summary judgment may be granted where the pleadings and other materials 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(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The burden is on the moving party (in this case, respondent) to demonstrate that there is no genuine dispute as to any material fact and that he or she is entitled to judgment as matter of law. FPL Grp., Inc. v. Commissioner, 116 T.C. 73, 74-75 (2001). In all cases, the evidence is viewed in the light most favorable to the nonmoving party. Bond v. Commissioner, 100 T.C. 32, 36 (1993). The nonmoving party may not rest upon mere allegations or denials in his or her pleadings but must set forth specific facts showing there is a genuine dispute for trial. Sundstrand Corp. v. Commissioner, 98 T.C. at 520.

Petitioner has failed to demonstrate, by affidavits or other acceptable materials, that there is a genuine issue for trial. Rule 121(d). Consequently, we conclude that there is no dispute as to any material fact and that a decision may be rendered as a matter of law.

The Federal Government obtains a Federal tax lien against the property and rights to property, whether real or personal, of a taxpayer with an outstanding tax liability whenever a demand for payment has been made and the taxpayer neglects or refuses to pay. Sec. 6321; Iannone v. Commissioner, 122 T.C. 287, 293 (2004). Section 6320(a)(1) requires the Secretary to provide written notice to a taxpayer when the Secretary has filed an NFTL against the taxpayer's property or property rights. See also sec. 6321. The Secretary must also notify the taxpayer of his or her right to a CDP hearing. Sec. 6320(a)(3).

If the taxpayer requests a CDP hearing, the hearing is conducted by the Appeals Office. Sec. 6320(b)(1). At the hearing the taxpayer may raise any relevant issue relating to the unpaid tax or the NFTL. Secs. 6320(c), 6330(c)(2)(A). Taxpayers are to provide all relevant information requested by the Appeals Office. Sec. 301.6320-1(e)(1), Proced. & Admin. Regs. Once the settlement officer makes a determination, the taxpayer may appeal the determination to this Court. Secs. 6320(c), 6330(d)(1).

A taxpayer may challenge an underlying tax liability during a CDP hearing if the taxpayer did not receive a statutory notice of deficiency or otherwise did not have the opportunity to dispute the liability. Sec. 6330(c)(2)(B); Montgomery v. Commissioner, 122 T.C. 1, 7 (2004). The Court considers an underlying tax liability on review only if the taxpayer properly raises the issue during the CDP hearing. Sec. 301.6330-1(f)(2), Q&A-F3, *Proced. & Admin. Regs.*; see also Giamelli v. Commissioner, 129 T.C. 107, 114-115 (2007). Since petitioner had the opportunity to raise the issue of her underlying tax liability for 2012 and 2014 during the CDP hearing but failed to do so, we review for abuse of discretion. Goza v. Commissioner, 114 T.C. 176, 182 (2000).

In determining whether there has been an abuse of discretion, we consider whether the determination by the Appeals Office was arbitrary, capricious, or without sound basis in fact or law. See, e.g., Murphy v. Commissioner, 125 T.C. 301, 320 (2005), *aff'd*, 469 F.3d 27 (1st Cir. 2006); Woodral v. Commissioner, 112 T.C. 19, 23 (1999). The Court does not conduct an independent review and substitute its judgment for that of the settlement officer. Murphy v. Commissioner, 125 T.C. at 320. If the settlement officer follows all statutory and administrative guidelines and provides a reasoned, balanced decision, the Court will not reweigh the equities. Link v. Commissioner, T.C. Memo. 2013-53, at \*12.

Absent a stipulation to the contrary, an appeal in this case would normally lie with the U.S. Court of Appeals for the Ninth Circuit. Sec. 7482(b)(1)(G)(i). Under Ninth Circuit precedent the scope of our review is generally limited to the administrative record. See Keller v. Commissioner, 568 F.3d 710, 718 (9th Cir. 2009) (adopting Robinette v. Commissioner, 439 F.3d 455, 459-460 (8th Cir. 2006), *rev'g* 123 T.C. 85 (2004)), *aff'g in part as to this issue* T.C. Memo. 2006-166, *and aff'g in part, vacating in part* decisions in related cases.

Following the CDP hearing, the settlement officer must determine whether to sustain the NFTL. In making that determination, section 6330(c)(3) requires that the settlement officer consider: (1) whether the requirements of any applicable law or administrative procedure have been met; (2) any issues appropriately raised by the taxpayer; and (3) whether the collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that the collection action be no more intrusive than necessary. Sec. 6320(c); see also Lunsford v. Commissioner, 117 T.C. 183, 184 (2001).

The settlement officer verified that all legal and procedural requirements had been met before respondent issued the notice of determination. He considered

whether petitioner qualified to have the NFTL discharged and determined that the facts did not support discharging the lien. The settlement officer did not abuse his discretion by concluding that actions taken in the notice of determination balanced the need for the efficient collection of taxes with the legitimate concern that the collection action be no more intrusive than necessary.

Petitioner did not provide the settlement officer with her amended Federal income tax returns, did not request any collection alternatives, and did not submit the requested financial documentation. Therefore, the settlement officer did not abuse his discretion. See sec. 301.6330-(1)(e)(1), Proced. & Admin Regs.

Upon due consideration, it is

ORDERED that respondent's motion for summary judgment dated January 23, 2020, is granted. It is further

ORDERED that this case is stricken from the Court's Los Angeles, California, session commencing June 15, 2020. It is further

ORDERED and DECIDED that respondent's notice of determination dated June 3, 2019, upon which this case is based, is sustained.

**(Signed) Kathleen Kerrigan  
Judge**

ENTERED: **MAR 23 2020**