

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

LINNEA HALL MCMANUS & JOHN)	
MCMANUS,)	
)	
Petitioners,)	
)	
v.)	Docket No. 9946-19 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 November 26, 2019. In his motion, respondent requests that the Court sustain the determination made in a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated May 10, 2019 (notice), upholding a proposed levy action with respect to petitioners' outstanding 2013 and 2016 Federal income tax liabilities (underlying liabilities).² By Order dated December 3, 2019, petitioners' response to respondent's motion was made due on or before December 26, 2019, but they have not submitted one. In that Order, they were advised that the failure to respond could result in the granting of respondent's motion and the entry of decision against them.

Background

The underlying liabilities were assessed in due course after petitioners' 2013 and 2016 Federal income tax returns were filed. See sec. 6201(a) (1).

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

²A copy of the notice is included with the materials submitted by respondent in support of his motion.

By letter dated June 11, 2018, respondent notified petitioners of his intent to levy in order to collect the underlying liability and advised them of their right to request an administrative hearing, which they did. In their request for an administrative hearing, petitioners proposed an installment agreement as a collection alternative to the levy and further represented that they could not pay the underlying liabilities due to financial hardship.

An administrative hearing was conducted by telephone on February 5, 2019. In response to the settlement officer's request, on February 11, 2019, petitioners provided various financial documents, including a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals. Taking into account this financial information, the settlement officer rejected petitioners' claim that they could not pay the underlying liabilities on account of financial hardship and further concluded that petitioners had the ability to pay \$1,040 per month towards the underlying liabilities. By letter dated March 20, 2019, the settlement officer informed petitioners that an installment agreement of \$1,040 per month would be acceptable. In that letter, the settlement officer further requested petitioners provide any additional information they wanted her to consider, as well as proof of compliance with their estimated tax obligations for tax year 2018. That letter also scheduled another conference call. The settlement officer called as scheduled and left a voicemail message to return her call. Petitioners did not respond.

As it turned out, petitioners never responded to the settlement officer's proposed installment agreement. They also never provided proof of compliance with their estimated tax obligations for 2018. Consequently, the notice was issued in which respondent determined that a levy is an appropriate collection action with respect to the underlying liabilities.

Petitioners did not during the administrative proceeding, and they do not in this proceeding, challenge the existence or amounts of the underlying liabilities.

Discussion

Section 6331(a) authorizes the Commissioner to levy upon property and property rights of a person liable for Federal 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 respondent 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. If a taxpayer receives a notice of proposed levy, then the taxpayer 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 taxpayer 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 taxpayer may also raise at the hearing challenges to the existence or amount of the underlying liability if the taxpayer did not receive a 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 taxpayer's underlying tax liability is not in dispute, as is the case here, we review respondent's determination to proceed with collection for abuse of discretion. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). An abuse of discretion occurs if the determination is "arbitrarily, capriciously, or without sound basis in law or fact." Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

Both installment agreements and offers in compromise are forms of collection alternatives. As a prerequisite for consideration or approval by respondent of such types of collection alternatives, or of the administrative relief afforded by currently not collectible status, it is generally incumbent upon the taxpayer to provide requested financial information to permit evaluation of a taxpayer's ability to pay. See, e.g., secs. 6159, 7122, I.R.C.; Kindred v. Commissioner, 454 F.3d 688, 697 (7th Cir. 2006); Olsen v. United States, 414 F.3d 144, 151 (1st Cir. 2005); Murphy v. Commissioner, 125 T.C. 301, 315 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Wright v. Commissioner, T.C. Memo. 2012-24. Similarly, respondent's guidelines with respect to collection alternatives direct that the taxpayer must be in current compliance with filing and estimated tax payment obligations. See, e.g., McLaine v. Commissioner, 138 T.C. 228, 243 (2012); Giamelli v. Commissioner, 129 T.C. 107, 115-116 (2007); Taylor v. Commissioner, T.C. Memo. 2009-27. Moreover, it is not an abuse of discretion for respondent to decline to consider an installment agreement or offer in compromise, if as in this case, no specific collection alternative proposal was made to the settlement officer. See, e.g., Kindred v. Commissioner, 454 F.3d at 696;

Kendricks v. Commissioner, 124 T.C. 69, 79 (2005). Stated otherwise, it is the obligation of the taxpayer, not the reviewing officer, to start negotiations regarding a collection alternative by making in the first instance a specific proposal.

Here, the record reflects that the settlement officer reviewed and took into account (1) the financial information submitted by petitioners, and (2) the guidelines set forth in the Internal Revenue Manual. The settlement officer did not abuse her discretion in sustaining the collection action because petitioners failed to provide the information she requested, and they otherwise failed to establish that they were in compliance with their estimated tax obligations for 2018.

Nothing in the record suggests that the settlement officer failed properly to verify that the requirements of any applicable law and administrative procedure were met in the processing of petitioners' case, or that the proposed levy balances the Government's interest in the efficient collection of taxes with petitioners' concerns that the collection action be no more intrusive than necessary.

Summary judgment may be granted "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). There have been no factual disputes raised, and we are satisfied that respondent is entitled to decision as a matter of law. That being so, it is

ORDERED that respondent's motion 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: **MAY 06 2020**