

UNITED STATES TAX COURT  
WASHINGTON, DC 20217 PA

CRAIG A. SOPIN & RUTH SOPIN, )  
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 Petitioners, )  
 )  
 v. ) Docket No. 10242-19 L.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )

**ORDER AND DECISION**

In this collection due process (CDP) case, petitioners seek review pursuant to sections 6320(c) and 6330(d)(1)<sup>1</sup> of a determination by the Office of Appeals (Appeals Office) of the Internal Revenue Service (IRS) to sustain a notice of federal tax lien (NFTL) and proposed levy action to collect petitioners' unpaid Federal income tax liability for tax year 2016. The issue for decision is whether the settlement officer abused her discretion in sustaining the NFTL filing and notice of intent to levy. Respondent moved for summary judgment pursuant to Rule 121, contending that there are no disputed issues of material fact and that the settlement officer's determination to sustain the collection action was proper as a matter of law. Petitioners filed a Response opposing respondent's motion.

There are no disputes of material fact and judgment may be rendered as a matter of law. We conclude that the settlement officer did not abuse her discretion in sustaining the proposed collection action and accordingly will grant respondent's motion for summary judgment.

Background

Petitioners filed their 2016 Federal income tax return on October 15, 2017, self-reporting a tax liability of \$38,528. They failed to pay that liability. On November 20, 2017, respondent entered assessments against petitioners for the unpaid 2016 tax liability plus additions to tax and interest. Petitioners failed to pay the amount due. Consequently, on July 11, 2018, respondent issued to petitioners a Letter 1058-A, Notice of Intent to Levy, regarding petitioners' 2016 tax liability. Respondent filed the NFTL on July 19, 2018, and on the same day issued to petitioners a Letter 3172, Notice of Federal Tax Lien and Your Right to Hearing Under 6320.

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<sup>1</sup>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, unless otherwise indicated. We round all monetary amounts to the nearest dollar.

On August 7, 2018, petitioners timely filed with respondent a Form 12153, Request for Collection Due Process Hearing. On the Form 12153 they checked the box for “Withdrawal” of the Federal tax lien. They did not specify a reason for the withdrawal other than to state that there was no basis for the lien or levy. Petitioners also stated that their “[r]equest for 120 day stay of collection was denied” and the “collection activity is overly aggressive under [the] circumstances.”<sup>2</sup>

Upon receiving petitioners’ case, Settlement Officer Edith M. Dermody (SO Dermody) reviewed the case file and verified that the tax liability for 2016 had been properly assessed and that all other requirements of applicable law and administrative procedure were met. On October 3, 2018, SO Dermody sent petitioners a letter scheduling a telephone conference and inviting them to submit the following: a signed Federal income tax return for 2017; Form 433-A, Collection Information Statement; Form 12277, Application for Withdrawal of Filed Notice of Federal Tax Lien; and proof of estimated tax payments paid in full for tax year 2018 to date.

SO Dermody and Mr. Sopin held the telephone conference on October 19, 2018. Mr. Sopin advised that he was unable to complete a Form 433-A because it was too difficult to assess the value of the assets in his collection of memorabilia from the sinking of the RMS Titanic. SO Dermody afforded petitioners a one-week extension to provide the previously requested financial information. On October 25, 2018, Mr. Sopin called SO Dermody and confirmed that she received a copy of petitioners’ signed tax return for 2017. The delinquent 2017 tax return reflected a balance due. Petitioners did not provide any other financial information, and never provided a Form 433-A or a Form 12277.

Petitioners filed their 2018 tax return, reporting a tax due of \$33,607. Petitioners made an estimated tax payment of \$13,000 for year 2018 on December 3, 2018.<sup>3</sup> This payment was delinquent as it missed the April 15, June 15, and September 15 installment deadlines. On May 14, 2019, respondent sent petitioners a Notice of Determination sustaining the lien filing and proposed levy action related to the 2016 tax year. In the Notice of Determination, SO Dermody found that the collection action balanced the Government’s need for the efficient collection of tax with petitioners’ legitimate concerns that the collection action be no more intrusive than necessary because petitioners failed to provide the information that she needed to consider collection alternatives. Petitioners timely filed their petition, and respondent moved for summary judgment on February 7, 2020.

Petitioners filed a response opposing respondent’s motion for summary judgment on March 9, 2020. In their response, petitioners confirm and contend that (1) they do not wish to challenge the underlying liability; (2) they did not seek a collection alternative on their Form 12153; and (3) respondent has abused his discretion by considering a collection alternative that

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<sup>2</sup>We have endeavored to correctly interpret the handwriting on the form, which is not entirely clear.

<sup>3</sup>Generally, an individual is required to pay estimated taxes in four payment periods with the first payment due April 15, the second payment due June 15, the third payment due September 15, and the fourth payment due January 15 of the following taxable year. Sec. 6654(c)(2).

petitioners did not request. Further, petitioners claim that they are making an effort to pay down their liabilities for other tax years (not at issue in this case) the effect of which was to delay their payment of the 2016 tax liability.

## Discussion

### A. Summary Judgment Standard and Standard of Review

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). We may grant summary judgment when there is no genuine dispute of material fact and a decision may be rendered as a matter of law. Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). In deciding whether to grant summary judgment, we construe factual materials and inferences drawn from them in a light most favorable to the nonmoving party. Id. The nonmoving party may not rest upon the mere allegations or denials in their pleadings, but must set forth specific facts showing that there is a genuine dispute for trial. Rule 121(d); see Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). We have reviewed respondent's motion for summary judgment, petitioners' response, and all of the documents submitted in support of these filings. The record establishes that this case is appropriate for summary adjudication.

This Court has jurisdiction to review the administrative determination made by the Appeals Office. Sec. 6320(c), 6330(d)(1). If the taxpayer's underlying tax liability is not in dispute, as is the case here, we review the Appeals Office's determination for abuse of discretion. Sego v. Commissioner, 114 T.C. 604, 610 (2000); 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. See, e.g., Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006).

### B. Abuse of Discretion

In reviewing the settlement officer's determinations we consider whether she: (1) properly verified that the requirements of applicable law or administrative procedure have been met, (2) considered any relevant issues petitioners raised, and (3) considered whether any proposed collection action balances the Government's need for the efficient collection of taxes with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary. See sec. 6330(c)(3); Sego v. Commissioner, 114 T.C. at 609. Our review of the record establishes that the settlement officer satisfied all of these requirements.

### C. CDP Review Procedure

Section 6321 imposes a lien in favor of the United States upon all property and rights to property of a taxpayer where there exists a failure to pay any tax liability after demand for payment. The lien generally arises at the time assessment is made. Sec. 6322. Section 6320(a) requires the Secretary to notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323. This notice required by section 6320 must advise the taxpayer

of the opportunity for administrative review of the matter in the form of a hearing before the Appeals Office. Sec. 6320(a).

Section 6331(a) authorizes the Secretary to levy upon property and property rights of a taxpayer liable for taxes who fails to pay those taxes within 10 days after a notice and demand for payment is made. Section 6331(d) provides that the levy authorized in section 6331(a) may be made with respect to "unpaid tax" only if the Secretary has given written notice to the taxpayer 30 days before the levy. Sections 6320(b) and 6330(b) grants a taxpayer the right to a fair hearing before an impartial officer of the Appeals Office.

#### D. Analysis

We turn first to petitioner's request for a lien withdrawal. The Commissioner may withdraw the lien under certain circumstances, such as if the filing of the notice was premature or otherwise not in accordance with administrative procedures. Sec. 6323(j)(1)(A); see Kyereme v. Commissioner, T.C. Memo. 2012-174. A lien withdrawal is a collection alternative and as such, a taxpayer is required to provide the settlement officer with relevant information so she can determine whether withdrawing the lien is warranted. See Roudakov v. Commissioner, T.C. Memo. 2017-121, at \*11-\*12; Nguyen v. Commissioner, T.C. Memo. 2020-97, at \*17; sec. 301.6320-1(e)(3), Q&A-E6, *Proced. & Admin. Regs.*

A taxpayer's failure to present the settlement officer with evidence regarding his entitlement to the withdrawal of the lien means that he did not properly raise that issue at the administrative hearing. See LG Kendrick, LLC v. Commissioner, 146 T.C. 17, 39 (2016), *aff'd*, 684 F. App'x 744 (10th Cir. 2017); Nguyen v. Commissioner, at \*17. Petitioners did not provide the information requested by SO Dermody, such as a Form 12277, to support their request for lien withdrawal. Accordingly, SO Dermody did not abuse her discretion in rejecting petitioners' request to withdraw the lien.

Petitioners further allege that the Appeals Office erred in considering a collection alternative because they did not request one. We conclude it was not an abuse of discretion for the Appeals Office to construe petitioners' request for a "120 day stay of collection" as a collection alternative. When evaluating a collection alternative, a settlement officer does not abuse her discretion in rejecting it if the taxpayer was not in compliance with estimated tax obligations. See, e.g., Giamelli v. Commissioner, 129 T.C. 107, 115-116 (2007). In Christopher Cross, Inc. v. United States, 461 F.3d 610, 613 (5th Cir. 2006), the Fifth Circuit found that taxpayer's failure to timely pay owed taxes was a perfectly reasonable basis for rejecting an offer-in-compromise relating to other unpaid taxes. See Hartmann v. Commissioner, 638 F.3d 248, 250 (3d Cir. 2011). Petitioners paid their estimated tax for taxable year 2018 in a delinquent fashion.<sup>4</sup> By waiting until December 3, 2018 to pay their estimated tax they missed the April 15, June 15, and September 15 installment deadlines. See sec. 6654(c)(2). Accordingly, the record establishes that SO Dermody did not abuse her discretion in sustaining the collection action.

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<sup>4</sup>It also appears, but is not entirely clear from the record, that petitioners were not in compliance with their payment requirements of Federal income tax for taxable year 2017.

Finally, petitioners never provided a Form 433-A to SO Dermody. It is well settled that the Commissioner is justified in rejecting a proposed collection alternative if the taxpayer fails to submit requested financial information. See, e.g., Pough v. Commissioner, 135 T.C. 344, 351 (2010). SO Dermody requested additional information from petitioners on October 3, 2018, and gave them a one-week extension to provide the additional information after the hearing on October 19, 2018. The notice of determination was issued on May 14, 2019. The record establishes that petitioners had a sufficient amount of time to submit the requested documentation. As petitioners failed to supply the requested financial information, SO Dermody did not abuse her discretion in issuing the notice of determination sustaining the collection action.

The record shows that the Appeals Office properly verified that the requirements of any applicable laws and administrative procedures were met in the processing of petitioners' case. The record establishes that SO Dermody considered all of relevant issues petitioners raised. Finally, the Appeals Office balanced the Government's need for the efficient collection of taxes with petitioners' concerns that the collection action be no more intrusive than necessary. In sum, the Appeals Office did not abuse its discretion in this case.

Accordingly, there is no dispute as to a material fact and that respondent is entitled to judgment as a matter of law. We sustain the notice of determination upon which this case is based. Any contentions we have not addressed we deem irrelevant, moot, or meritless.

Upon due consideration and for cause, it is

ORDERED that respondent's Motion for Summary Judgment, filed February 7, 2020, is granted. It is further

ORDERED AND DECIDED that respondent's notice of determination concerning collection actions under section 6320 and/or 6330, dated May 14, 2019, upon which this case is based, is sustained.

**(Signed) Courtney D. Jones  
Judge**

ENTERED: **AUG 04 2020**