

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JARED MITCHELL &)	
K. SULLIVAN MITCHELL,)	
)	
Petitioners,)	
)	
v.)	Docket No. 10883-19 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This collection review case involving a proposed levy is before the Court on respondent’s motion for summary judgment, filed pursuant to Rule 121.¹ Petitioners filed a response in opposition to respondent’s motion and request that the case be remanded to the Internal Revenue Service (IRS) Office of Appeals (Appeals Office) for a supplemental hearing.

Summary judgment serves to “expedite litigation and avoid unnecessary and expensive trials.” Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). The Court may grant summary judgment only if there is no genuine dispute as to a material fact and the moving party is entitled to judgment as a matter of law. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Respondent, as the moving party, bears the burden of proof. FPL Grp., Inc. & Subs. v. Commissioner, 115 T.C. 554, 559 (2000). In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party. FPL Grp., Inc. & Subs. v. Commissioner, 115 T.C. at 559.

Petitioners received a notice of intent to levy for the taxable years 2014, 2015, and 2016 (years in issue) and timely requested an administrative hearing with the Appeals Office. In connection with their submission of an offer in

¹Rule references are to the Tax Court Rules of Practice and Procedure and section references are to the Internal Revenue Code, as amended.

compromise, petitioners informed the Appeals Office that Mr. Mitchell had been convicted of securities fraud, was incarcerated at that time, and had been ordered to pay restitution in excess of \$9 million.

In rendering an administrative determination in a collection review proceeding under section 6330, the Appeals Office must, inter alia, verify that all applicable laws and administrative procedures were met in processing the case. Sec. 6330(c)(1). The Appeals Office also must consider any issues raised by the taxpayer, relating to the collection action, including offers of collection alternatives and challenges to the appropriateness of the collection action. Sec. 6330(c)(2)(A).

The record indicates that the Appeals Office rejected petitioners' offer in compromise and, after reviewing their tax return for 2018, concluded that they could pay their outstanding tax liability in monthly installments of \$2,150. Petitioners maintain that they provided all financial information that they had access to in connection with the IRS's evaluation of their offer in compromise. When petitioners declined the proposed installment agreement, the Appeals Office issued the notice of determination in dispute.

Respondent's motion for summary judgment is not properly supported. What the record lacks is any documentation, such as a Form 433-A, Collection Information Statement, and related financial records, which would tend to show that the Appeals Office properly evaluated petitioners' reasonable collection potential and their overall ability to pay the taxes they owe for the years in issue. Similarly, there are no transcripts of account (such as Forms 4340) that would demonstrate that the Appeals Office properly verified that the IRS followed all applicable laws and procedures in this case.

Under the circumstances, the Court will deny respondent's motion for summary judgment and remand this matter to the Appeals Office. In particular, the Appeals Office is directed to conduct an administrative proceeding and develop an administrative record that demonstrates whether petitioners are eligible for an offer in compromise or an installment agreement for the years in issue. Petitioners are expected to fully cooperate with the Appeals Office and provide detailed financial information regarding their income and expenses and assets and liabilities that will permit the Appeals Office to make a fully informed decision whether it is appropriate to proceed with the proposed levy action.

Upon due consideration, it is

ORDERED that respondent's motion for summary judgment, as supplemented, is denied. It is further

ORDERED that this case is remanded to Appeals Office for the purpose of affording petitioners a further administrative hearing pursuant to I.R.C. section 6330 as more fully described above. It is further

ORDERED that respondent shall offer petitioners an administrative hearing at a location and date and time that is mutually agreed upon (by teleconference if possible), but no later than December 22, 2020. It is further

ORDERED that each party shall, on or before January 6, 2021, file with the Court and serve on the other party, a report regarding the then present status of this case. It is further

ORDERED that jurisdiction is retained by the undersigned.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

Dated: Washington, D.C.
October 9, 2020