

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CHARLES GARAVAGLIA & MARY ANN)	
GARAVAGLIA,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 1351-14 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is before the Court on respondent's Motion for Summary Judgment, Memorandum in Support of Motion for Summary Judgment, and Declaration of Maimouna Diakite filed on April 14, 2015. In the motion, respondent argued that settlement officer (SO) Diakite did not abuse her discretion when she denied petitioners' offers in compromise (OIC's) for doubt as to liability, doubt as to collectibility, and exceptional circumstances. By Order dated April 15, 2015, the Court directed petitioners to file a response to respondent's motion by May 14, 2015, and further informed the parties that action on respondent's motion for summary judgment will be held in abeyance. On May 11, 2015, petitioners filed a motion for extension of time requesting for an extension to respond to respondent's motion by May 28, 2015. The Court granted petitioners' motion for extension of time on May 14, 2015.

On May 21, 2015, respondent filed a Motion for Continuance, and the Court granted the continuance on May 27, 2015. On May 28, 2015, petitioners filed a Response to Motion for Summary Judgment and Declaration of Joseph Falcone. In their motion, petitioners argue that exceptional circumstances exist with regard to petitioner, Mr. Garavaglia, that demonstrate that collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner.

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We may grant summary judgment where there is no genuine issue as to any material fact and a decision may be rendered as a matter of law. Rule 121(a)¹ and (b). Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The moving party bears the burden of proving that there is no genuine issue as to any material fact, and factual inferences will be viewed in the manner most favorable to the nonmoving party. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985). Although facts are viewed in the light most favorable to the nonmoving party, see Naftel v. Commissioner, 85 T.C. 527, 529 (1985), the nonmoving party may not rest upon allegations and denials in that party's pleadings. The nonmoving party must set forth specific facts showing that there is a genuine issue as to any material fact for trial. Rule 121(d); Dalstrom v. Commissioner, 85 at 820-821.

A taxpayer may submit an OIC as a collection alternative to a proposed levy. Sec. 6330(c)(2)(A)(iii). The Commissioner has wide discretion to accept or reject an OIC. See Churchill v. Commissioner, T.C. Memo. 2011-182. The Commissioner may accept an OIC when he determines that a genuine dispute as to the existence or amount of the correct tax liability exists or the liability exceeds the taxpayer's income and assets. Sec. 7122(d); sec. 301.7122-1(b)(1) and (2), Proced. & Admin. Regs. If the Commissioner determines neither ground exists, he may accept an OIC that promotes effective tax administration. Sec. 301.7122-1(b)(3), Proced. & Admin. Regs.

The Commissioner may determine that an OIC would promote effective tax administration when collection in full would create economic hardship. See sec. 301.7122-1(b)(3)(i), (iii), Proced. & Admin. Regs. Economic hardship may exist where full or partial collection would cause a taxpayer to be unable to pay his or her reasonable basic living expenses. See sec. 301.6343-1(b)(4), Proced. & Admin. Regs. This may be true, for example, where the taxpayer's medical condition is so severe that "financial resources will be exhausted providing for care and support during the course of the condition." See sec. 301.7122-1(c)(3)(i)(A), Proced. & Admin. Regs.

If collection would not cause economic hardship, the Commissioner may still compromise a tax liability to promote effective tax administration when the taxpayer identifies compelling public policy or equity considerations due to

¹Unless otherwise indicated, section references are to the Internal Revenue Code for the relevant period, and Rule references are to the Tax Court Rules of Practice and Procedure.

exceptional circumstances. See sec. 301.7122-1(b)(3)(ii), *Proced. & Admin. Regs.* However, the Commissioner may not enter into a compromise that “would undermine compliance by taxpayers with the tax laws.” See sec. 301.7122-1(b)(3)(iii), *Proced. & Admin. Regs.* Notwithstanding the fact that the Commissioner must consider all facts and circumstances, three nonconclusive factors point to a determination that compromise would undermine compliance with the tax laws. Sec. 301.7122-1(c)(1), (3)(ii), *Proced. & Admin. Regs.* First, the taxpayer has a history of noncompliance with the filing and payment requirements of the Internal Revenue Code. Sec. 301.7122-1(c)(3)(ii)(A), *Proced. & Admin. Regs.* Second, the taxpayer has taken deliberate actions to avoid the payment of taxes. Sec. 301.7122-1(c)(3)(ii)(B), *Proced. & Admin. Regs.* Finally, the taxpayer has encouraged others to refuse to comply with the tax laws. Sec. 301.7122-1(c)(3)(ii)(C), *Proced. & Admin. Regs.*

Petitioners submitted three OIC’s to respondent, one indicating a dispute as to the amount of their liability, one indicating that the liability exceeded their income and assets, and one indicating that exceptional circumstances or economic hardship existed in their case. In the OIC’s petitioner’s attorney states: “Taxpayer and his wife are dying. He has Stage 4 Melanoma Cancer. The doctors, as of last week, gave taxpayer 3 months to 9 months to get his affairs in order. Both taxpayer and his wife are elderly, at 78 and 75 years old, respectively. Taxpayer’s wife has a defective heart valve and extremely low blood pressure, which causes her to faint at any time. She is going in for a procedure known as an ablation for her heart.” After considering the offers, the SO concluded that there was no doubt as to petitioners’ liability and that the liability was collectible.

Respondent claims in its Motion for Summary Judgment that Mr. Garavaglia’s previous indictment for tax fraud shows that an offer in compromise for exceptional circumstances would undermine compliance by taxpayers with the tax laws.

Petitioners claim in their response to motion for summary judgment that Mr. Garavaglia’s stage 4 cancer diagnosis is an exceptional circumstance that requires respondent to consider public policy or equity considerations in their case. They claim that Mr. Garavaglia’s grave health concerns affect his ability to participate fully in this matter.

Although Mr. Garavaglia’s previous indictment weighs heavily against petitioners, we cannot tell from the record whether the SO considered Mr. Garavaglia’s health issues in determining whether compelling public policy or

equity considerations exist to “provide a sufficient basis for compromising the liability.” See sec. 301.7122-1(b)(3)(ii), *Proced. & Admin. Regs.* The record simply states that “appeals reviewed [petitioners’] files in order to determine if there were any exceptional circumstances that warrant accepting these offers, but there were none.”

Nor can we say that the SO considered whether it was reasonably foreseeable that petitioners’ financial resources would be exhausted providing for Mr. Garavaglia’s health condition. See sec. 301.7122-1(c)(3)(i)(A), *Proced. & Admin. Regs.* The record shows that the SO compared the total value of petitioners’ investments and total equity in their assets with their total liabilities. There is no indication that she considered Mr. Garavaglia’s health issues in determining whether there was any economic hardship to petitioners.

The record does not establish that the SO properly considered all facts and circumstances to make a determination to reject petitioners’ OIC’s. See Bogart v. Commissioner, T.C. Memo. 2014-46 (an undeveloped record does not allow for meaningful review). Drawing all factual inferences against respondent, as the moving party in this motion, respondent has not established that there is no genuine dispute of material fact with respect to this issue, nor has respondent established that a decision may be entered in his favor as a matter of law. Summary judgment is not appropriate under these circumstances. See Rule 121(b). Accordingly, we will deny respondent’s motion for summary judgment.

Premises considered, it is

ORDERED that respondent’s motion for summary judgment filed on April 14, 2015, is denied. It is further

ORDERED that this case is no longer assigned to the undersigned, and this case is restored to the general docket for trial in due course.

(Signed) Joseph W. Nega
Judge

Dated: Washington, D.C.
July 23, 2015