

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

BRENT W. SHERWOOD & JANET K.)	
SHERWOOD,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 18946-15 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER AND DECISION

This case is on the Court’s November 3, 2016 Lubbock, Texas trial calendar. It arises from the Commissioner’s decision to issue a notice of intent to levy to petitioners Brent and Janet Sherwood to collect unpaid taxes. The Commissioner moved for summary judgment. Summary judgment is appropriate where “there is no genuine dispute as to any material fact and . . . a decision may be rendered as a matter of law.” Tax Court Rule 121(b). [#co_footnote_B00332003712468](#) “[A]n adverse party may not rest upon the mere allegations or denials of such party’s pleading, but such party’s response . . . must set forth specific facts showing that there is a genuine dispute for trial.” Tax Court Rule 121(d). The Sherwoods have not done this. We therefore find that there is no genuine dispute as to any material facts.

Those facts are that the Sherwoods claimed business expenses on Schedule C of their 2010 and 2011 returns. The IRS, however, moved those expenses to Schedule A, which resulted in additional tax liability for both years. The IRS sent the Sherwoods a notice of deficiency, but the Sherwoods never filed a petition in Tax Court. When they didn’t file a petition, the IRS assessed the deficiency and sent them a notice of intent to levy. The Sherwoods then asked for a collection-due-process (CDP) hearing, and checked the box that they wanted an installment

agreement or offer in compromise. They also challenged their underlying liability. The settlement officer who ran the hearing sent them the financial-information forms that the IRS tells taxpayers who want an alternative to forced collection to fill out. During a phone conference, the Sherwoods' attorney again represented that the Sherwoods would challenge the underlying liability. The settlement officer replied that IRS records showed that the couple had received a notice of deficiency, which meant that they were not able to challenge the underlying liability in a CDP hearing. Then, during the hearing, the Sherwoods stated that they didn't wish to enter an installment agreement and they didn't propose other collection alternatives. The settlement officer then determined that collection by levy was appropriate and that all the other rules and procedures that the IRS has to follow before collecting by a levy were obeyed.

The Sherwoods appealed. On October 12, 2016, we granted the Commissioner's motion to dismiss the 2011 tax year for mootness, so the 2010 tax year is the only year still in dispute. The only argument that the Sherwoods raised was that "[t]he entire amount of each deficiency (and any interest and penalties) is in dispute." Their petition appealing the notice of determination as well as their response to the motion for summary judgment argue only the issue of their underlying liability.

We've held that the settlement officer *must* satisfy herself that the IRS followed any applicable law or administrative procedure. *See Hoyle v. Commissioner*, 131 T.C. 197, 199 (2008). There is no dispute, however, that this is just what the Settlement officer did. She verified all relevant procedures -- which require the sending of various notices to the Sherwoods. In their response to the Commissioner's motion for summary judgment, the Sherwoods don't argue that they didn't receive these notices.

The Sherwoods admit with admirable honesty that Dr. Brent Sherwood received the notice of deficiency, but didn't pay close attention to it because he was studying for his board certification -- and we assume with some confidence that this is an exam even harder than the bar or CPA licensing exams. But his perhaps understandable focus on his profession and his simultaneous life-saving employment as a traveling emergency-room doctor doesn't mean that the settlement officer made either an error of fact or one of law in concluding that the Sherwoods can't challenge their underlying liability. *See IRC § 6330(c)(2)(B)*.

Finally, even though the Sherwoods sought an installment agreement in their CDP hearing request, the settlement officer didn't abuse her discretion in rejecting

this request because the Sherwoods themselves said that they didn't want to enter an installment agreement during the CDP hearing. Nor did she abuse her discretion in determining the Sherwoods were not eligible for an offer in compromise. *See Sullivan v. Commissioner*, 104 T.C.M. (CCH) 713, 718 (2012).

It is therefore

ORDERED that respondent's motion for summary judgment is granted. It is also

ORDERED and DECIDED that respondent may proceed with the collection of petitioners' federal income-tax liabilities for the tax year 2010 as described in the Notices of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code, dated June 26, 2015.

**(Signed) Mark V. Holmes
Judge**

ENTERED: **OCT 26 2016**