

UNITED STATES TAX COURT
WASHINGTON, DC 20217 PA

G. STEVEN BASHEN & JANET E. BASHEN,)
)
 Petitioners,)
)
 v.) Docket No. 21924-15 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 May 15, 2017. By Order dated May 19, 2017, petitioners were directed to respond to respondent’s motion on or before June 9, 2017, and were advised that the failure to respond could result in the granting of respondent’s motion for summary judgment. Petitioners have not responded to the motion.² That being so, we proceed as though the facts relied upon by respondent in support of his motion are not in dispute. Those facts, as set forth in respondent’s motion and materials submitted along with it and summarized below, show that respondent is entitled to decision as a matter of law. See Rule 121.

Petitioners’ 2005 joint Federal income tax return was filed timely on October 18, 2006, and their untimely joint 2008 Federal income tax return was filed on May 4, 2010. The Federal income tax liabilities shown on the returns were not fully paid, and those liabilities along with related amounts, were assessed in due course (underlying liabilities).

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,

² Although we could summarily grant respondent’s motion on the basis of petitioners’ failure to respond to it, we’ll address the merits of the motion instead. See Rule 121(d); see, e.g., Lunsford v. Commissioner, 117 T.C. 183, 187 (2001); Nicklaus v. Commissioner, 117 T.C. 117, 120 n.4 (2001).

By letters dated February 4, 2015, petitioners were advised of respondent's intention to collect the underlying liabilities by levy (proposed collection action). The letters also advised them of their right to request an administrative hearing in order to challenge the proposed collection action, which they did. According to their request, an offer-in-compromise should be considered as a collection alternative to respondent's proposed collection action.

Taking into account the financial information submitted by petitioners, respondent's settlement officer (SO) offered to substitute a partial payment installment agreement for the proposed collection action. Petitioners did not respond to the SO's offer, and they did not, during the administrative hearing, submit an offer-in-compromise.

On July 30, 2015, the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code (notice) was issued to petitioners in which respondent determined the proposed collection action was an appropriate collection action with respect to the underlying liabilities. A copy of the notice is attached to the petition.

According to the petition, respondent abused his discretion because "[d]ue to the continuing wage levy and other financial constraints, Petitioners would be unable to make payments at the level required by the government." We assume this statement refers to the SO's proposed partial payment installment agreement, which the SO was not obligated to make, and to which petitioners did not respond before the notice was issued.

As it turned out, petitioners did not request a collection alternative to the proposed collection action at the administrative hearing. We have repeatedly held that there is no abuse of discretion in failing to consider collection alternatives when no such collection alternatives are submitted during the administrative hearing challenging a proposed collection action. See Kendricks v. Commissioner, 124 T.C. 69, 79 (2005); James A. Walker, P.A. v. Commissioner, T.C. Memo. 2014-187; Veneziano v. Commissioner, T.C. Memo. 2011-160. Consequently, in the matter before us, petitioners have failed to show that respondent abused his discretion in sustaining the proposed collection action.

In all other respects respondent's motion shows that the SO proceeded as required by the statutory scheme, and nothing submitted by petitioners suggests otherwise. It follows and is

ORDERED that respondent's motion is granted. It is further

ORDERED and DECIDED: that respondent may proceed with the collection action as determined in the notice.

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED: **DEC 20 2017**