UNITED STATES TAX COURT
WASHINGTON, DC 20217

JOHN LUCIAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 16456-17 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER AND DECISION

On August 3, 2017, petitioner filed a petition to review the Internal Revenue Service's (IRS)[1] Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330[2] (notice of determination), dated July 27, 2017. The notice of determination sustained a proposed levy with respect to petitioner's unpaid tax liabilities for 2012, 2013, and 2014.

On November 8, 2017, respondent filed a Motion for Summary Judgment (motion), pursuant to Rule 121, supported by a declaration submitted by Elizabeth DeAngelis, IRS Office of Appeals (Appeals Office) settlement officer. Respondent contends he is entitled to judgment as a matter of law sustaining the determination that it is appropriate to proceed with the proposed levy.

On November 13, 2017, the Court ordered petitioner to file a response to respondent's motion on or before December 4, 2017, and informed petitioner that failure to comply with the order may result in the granting of respondent's motion.

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[1]The Court uses the term "IRS" to refer to administrative actions taken outside of these proceedings. The Court uses the term "respondent" to refer to the Commissioner of Internal Revenue, who is the head of the IRS and is respondent in this case, and to refer to actions taken in connection with this case.

[2]Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

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Petitioner, who is represented by counsel, has not complied with that order. By order dated January 10, 2018, respondent's motion was assigned for disposition to the undersigned. See sec. 7443A(b)(4), (c).

Upon review of the record, the Court is satisfied that the material facts are not in dispute and, for reasons summarized below, respondent is entitled to a decision permitting him to collect by levy petitioner's unpaid tax liabilities for 2012, 2013, and 2014.

Petitioner resided in Maryland at the time he filed his petition with the Court.

Background

Petitioner filed extensions to extend the filing dates of his Federal individual tax returns for 2012, 2013, and 2014, to October 15, 2013, October 15, 2014, and October 15, 2015, respectively. Petitioner did not file any of the tax returns by the extended filing dates. The IRS filed substitutes for return for petitioner for 2012 on July 11, 2014, and for 2013 and 2014 on October 22, 2015. Respondent assessed tax, additions to tax, and interest with respect to the substitutes for return and issued notice and demand payment letters to petitioner at his last known address. Petitioner did not make any payments following the assessments.

The IRS issued petitioner a Notice CP90, Intent to seize your assets and notice of your right to a hearing property or rights to property, (notice of intent to levy), dated March 6, 2017, with respect to his unpaid 2012, 2013, and 2014 tax liabilities. On April 5, 2017, petitioner, through his representative, attorney George A. Breschi, timely filed a Form 12153, Request for a Collection Due Process or Equivalent Hearing. In the Form 12153 petitioner challenged, among other things, the proposed levy with respect to the 2012, 2013, and 2014 tax liabilities.[3] Petitioner checked the box for "I Cannot Pay Balance" as a collection

[3]Petitioner also challenged two Notices CP90, each dated January 9, 2017, for proposed levies with respect to petitioner's unpaid tax liabilities for 2010 and 2011. On the Form 12153 petitioner checked the box to request an equivalent hearing. The SO determined that as to 2010 and 2011 petitioner's request for a (collection due process) CDP hearing was not timely. The SO issued a Decision Letter on Equivalent Hearing (decision letter), concluding that the proposed levies with respect to the unpaid 2010 and 2011 tax liabilities were appropriate. Petitioner has not challenged the decision letter in this case.

alternative and in the "Other" section wrote: "Taxpayer has been ill and forced to cash in all savings and retirements which has generated the substantial tax liabilities. The taxpayer is requesting that the Internal Revenue Service consider a reduction in tax liability due to taxpayer's health."

Petitioner's CDP hearing request was assigned to settlement officer Elizabeth DeAngelis (SO), who confirmed she did not have prior involvement with petitioner for the type of tax and tax years at issue in the case. The SO sent petitioner a letter dated May 22, 2017, with a copy to Mr. Breschi, notifying him that the Appeals Office had received his CDP hearing request and that she had scheduled a telephone CDP hearing for June 14, 2017. The SO requested that petitioner submit: (1) a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, (2) a tax return for 2015, and (3) proof that estimated tax payments had been paid in full for the year to date. The SO gave petitioner 14 days to submit a Form 433-A and proof of estimated tax payments and 21 days to submit the 2015 tax return.

Mr. Breschi submitted petitioner's 2015 tax return to the SO by letter dated on June 13, 2017. The 2015 tax return reported a balance due of $10,752. In the letter accompanying the 2015 tax return, Mr. Breschi notified the SO that he hoped to have a Form 433-A completed before the CDP hearing.

On July 5, 2017, the SO conducted the CDP hearing with Mr. Breschi.[4] Mr. Breschi requested more time to submit a Form 433-A. The SO gave Mr. Breschi until July 12, 2017, to submit a Form 433-A and advised him that if she did not receive it by then she would make a determination. On July 12, 2017, Mr. Breschi called the SO, informed her that he had been unable to secure a completed Form 433-A, and requested another extension to submit it. The SO reminded Mr. Breschi that she had already provided an extension and refused his request for an additional extension. She also advised Mr. Breschi that he could contact the IRS collections division to request a collection alternative when he had a completed Form 433-A.

The SO properly verified that the requirements of all applicable laws and administrative procedures were met in processing petitioner's case and that the proposed levy appropriately balanced the need for the efficient collection of taxes with petitioner's concerns that any collection action not be more intrusive than

[4]The CDP hearing was rescheduled to July 5, 2017.

necessary. The SO issued the notice of determination on July 27, 2017, sustaining the proposed levy with respect to the unpaid tax liabilities for 2012, 2013, and 2014.

Discussion

A. Summary Judgment

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy. Rule 121(a). The Court may grant summary judgment only "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b); see Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

Respondent, as the moving party, bears the burden of proving that no genuine dispute exists as to any material fact and that respondent is entitled to judgment as a matter of law. See FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. at 529. In deciding whether to grant summary judgment, the factual materials and inferences drawn from them must be considered in the light most favorable to the nonmoving party. FPL Group, Inc. v. Commissioner, 115 T.C. at 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529. The party opposing summary judgment must set forth specific facts which show that a question of a genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988); King v. Commissioner, 87 T.C. 1213, 1217 (1986); Shepherd v. Commissioner, T.C. Memo. 1997-555, 1997 Tax Ct. Memo LEXIS 645, at *7. Where the record viewed as a whole could not lead a reasonable trier of fact to find for the non-moving party, there is no "genuine issue for trial". Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

B. Hearings Under Section 6330

Section 6331(a) authorizes the Commissioner 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 Commissioner has given written notice to the taxpayer 30 days before the levy. Section 6330(a) requires the Secretary to send a written notice to the taxpayer of the amount of the unpaid tax and of the taxpayer's right to a section 6330 hearing at least 30 days before the levy is begun.

If a section 6330 hearing is requested, a hearing is to be conducted by the Appeals Office "by an officer or employee who has had no prior involvement with respect to the unpaid tax". Sec. 6330(b)(1), (3). The Appeals Office officer charged with conducting the administrative hearing under section 6330 must verify that the requirements of any applicable law and administrative procedure have been met in processing the taxpayer's case. Sec. 6330(c)(1). The Appeals Office must also consider any issues raised by the taxpayer, including offers of collection alternatives, appropriate spousal defenses, and challenges to the appropriateness of the collection action. Sec. 6330(c)(2)(A). The taxpayer may also challenge the existence or amount of his or her underlying tax liability if the taxpayer did not receive a notice of deficiency or did not otherwise have an opportunity to dispute such tax liability. Sec. 6330(c)(2)(B). Finally, the Appeals Office must consider whether the collection action balances the need for efficient collection against the taxpayer's concern that collection be no more intrusive than necessary. Sec. 6330(c)(3)(C).

This Court has jurisdiction under section 6330(d)(1) to review the Commissioner's administrative determinations. See Iannone v. Commissioner, 122 T.C. 287, 290 (2004). Where the underlying tax liability is properly at issue, the Court reviews the determination regarding the underlying tax liability de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). The Court reviews all other determinations for abuse of discretion. Id. at 182.

C. Underlying Tax Liabilities

In the Form 12153 petitioner wrote that he was "requesting that the Internal Revenue Service consider a reduction in tax liability due to taxpayer's health." The Court considers an issue on review only if the taxpayer properly raised it during the CDP hearing. Sec. 301.6330-1(f)(3), Q&A-F3, Proced. & Admin. Regs.

Even assuming that this statement constitutes a dispute as to the underlying tax liabilities, petitioner did not challenge the amount of the underlying tax liability for any year at issue during the CDP hearing or in the petition. Thus, a challenge to the underlying tax liabilities is not properly before the Court.

D. Collection Alternatives

In his Form 12153 petitioner requested placement in currently not collectible. The Court reviews the Appeals Office's determination as to collection alternatives for abuse of discretion. Goza v. Commissioner, 114 T.C. at 182. An abuse of discretion occurs if the Appeals Office exercises its discretion "arbitrarily, capriciously, or without sound basis in fact or law." Woodral v. Commissioner, 112 T.C. 19, 23 (1999). Nothing in our review of the administrative record supports a finding that the SO's denial of petitioner's requested collection alternative was arbitrary, capricious, or without sound basis in fact or law.

The record reflects that neither petitioner nor his attorney, Mr. Breschi, provided the SO with a Form 433-A, which was needed to determine petitioner's ability to pay and his eligibility for a collection alternative. Mr. Breschi requested an extension of time to submit a Form 433-A and the SO gave him seven more days to submit the financial information, after first having requested it in her letter dated May 22, 2017. Mr. Breschi did not ask for more than seven days when the first extension was approved. Mr. Breschi, as an attorney, understands the importance of filing due dates and has a professional responsibility to exercise due diligence. Instead, on the last day of the extended period he called the SO and requested an additional extension. The SO explained that she had already allowed more time and denied his request for an additional extension.

The Appeals Office will attempt to conduct a CDP hearing and issue a notice of determination "as expeditiously as possible under the circumstances" but there is no time period within which the Appeals Office must issue a notice of determination. Sec. 301.6330-1(e)(3), Q&A-E9, Proced. & Admin. Regs.; see, e.g., Murphy v. Commissioner, 469 F.3d 27, 30 (1st Cir. 2006) (holding that settlement officer did not act unreasonably in rejecting the taxpayer's request for an additional extension of time to provide information), aff'g 125 T.C. 301 (2005); Hartmann v. Commissioner, T.C. Memo. 2015-129, at *9 ("An Appeals officer is not required to negotiate with a taxpayer indefinitely or wait any specific amount of time after a CDP hearing to issue a notice of determination."); Clawson v. Commissioner, T.C. Memo. 2004-106, 2004 Tax Ct. Memo LEXIS 107, at *22 ("[T]here is neither requirement nor reason that the Appeals officer wait a certain

amount of time before rendering his determination as to a proposed levy."). The SO was not required to give Mr. Breschi an additional extension to submit the requested Form 433-A.

It is not an abuse of discretion for the Appeals Office to reject collection alternatives and sustain a proposed collection action when the taxpayer did not provide financial documentation. See McLaine v. Commissioner, 138 T.C. 228, 243 (2012); Pough v. Commissioner, 135 T.C. 344, 351 (2010); Mahlum v. Commissioner, T.C. Memo. 2010-212, 2010 Tax Ct. Memo LEXIS 266, at *2-*3; Huntress v. Commissioner, T.C. Memo. 2009-161, 2009 Tax Ct. Memo LEXIS 159, at *14; Prater v. Commissioner, T.C. Memo. 2007-241, 2007 Tax Ct. Memo LEXIS 244, at *7; Roman v. Commissioner, T.C. Memo. 2004-20, 2004 Tax Ct. Memo LEXIS 20, at *16. Accordingly, it was not an abuse of discretion for the SO to sustain the proposed levy as a result of petitioner's failure to submit the requested Form 433-A for the SO to consider his ability to pay.

E. Verification

In rendering an administrative determination in a collection review proceeding under section 6330, the Appeals Office must (1) verify that all applicable laws and administrative procedures were met; (2) consider any issues raised by the taxpayer, including offers of collection alternatives, appropriate spousal defenses, and challenges to the appropriateness of the collection action; and (3) consider whether the collection action balances the need for efficient collection against the taxpayer's concern that collection be no more intrusive than necessary. Sec. 6330(c)(1), (2)(A), (3)(C).

The record reflects that the SO properly verified that the requirements of all applicable laws and administrative procedures were met in the processing of petitioner's case and that the proposed levy appropriately balanced the need for the efficient collection of taxes with petitioner's concerns that any collection action be no more intrusive than necessary. The transcripts and materials attached as exhibits to respondent's motion and the accompanying declaration along with the statements of the SO in the notice of determination show that required assessment and collection procedures were followed.

F. Conclusion

The Court concludes that there is no genuine dispute as to any material fact and that SO did not abuse her discretion in denying petitioner's requested collection alternative.

Premises considered, it is

ORDERED that respondent's motion for summary judgment, filed November 8, 2017, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the proposed collection action (levy) in respect to petitioner's outstanding tax liabilities for 2012, 2013, and 2014, as determined in the notice of determination dated July 27, 2017, upon which this case is based.

(Signed) Diana L. Leyden
Special Trial Judge

ENTERED: **JAN 16 2018**