

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

LAWRENCE M. RINE,)
)
 Petitioner,)
)
 v.) Docket No. 1801-17 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

This case is currently set for trial on May 14, 2018, in Charleston, West Virginia. Mr. Rine filed a petition with the Tax Court challenging the Commissioner’s determination to sustain a levy against his assets. The Commissioner filed a motion for summary judgment under Rule 121.¹

In the motion the Commissioner argues that the settlement officer did not abuse her discretion when she proposed a \$914 installment agreement, which Mr. Rine rejected, and sustained the collection action against Mr. Rine. At no time has Mr. Rine contested the underlying liability, he only argues that he cannot pay the amount that the settlement officer proposed as an installment agreement because of his fixed income and high expenses. Since the hearing Mr. Rine’s medical condition has deteriorated, and his expenses have increased, impacting his ability to pay. We find that the settlement officer did not abuse her discretion, but because the circumstances have changed since the hearing, we remand the case for further consideration.

Background

On July 4, 2016, the Commissioner issued to Mr. Rine a notice of intent to seize assets and right to a hearing for trust fund recovery penalties under section

¹All Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code (Code) in effect for the years in issue, unless otherwise indicated.

6672. In a previous administrative process Mr. Rine had been found to be the person responsible for unpaid withholding liabilities of MSES Consultants, Inc. Mr. Rine filed a timely request for a hearing under section 6330.

On his Form 12153, Request for a Collection Due Process or Equivalent Hearing, Mr. Rine stated that he could not pay the balance. He also attached a handwritten addendum to the Form 12153 where he briefly described his financial and medical status, as well as his belief there was already an agreement in place regarding the payment of the underlying liability. According to Mr. Rine MSES Consultants, Inc. was in bankruptcy proceedings and as a part of those proceedings "MSES has agreed to pay \$10,000 per month" towards the payroll tax liability. Mr. Rine also reported that he was being treated for both high blood pressure and type 2 diabetes and had to make monthly visits to his doctor.

On October 5, 2016, the settlement officer assigned to his case scheduled the hearing for November 1, 2016. In the letter notifying Mr. Rine of the hearing, the settlement officer informed Mr. Rine that he would need to submit a Form 433-A, Collection Information Statement, and a Form 656, Offer in Compromise Booklet, before an offer in compromise would be considered.

In preparation for the hearing, the settlement officer reviewed the records in her possession regarding the collection action against Mr. Rine, as well as records regarding MSES Consultants, Inc. She found that there was no current or pending installment agreement with respect to the underlying liability. She also found that Mr. Rine had a prior opportunity to contest the penalties under section 6672 and that all legal and administrative requirements were met with respect to the levy.

On November 1, 2016, the settlement officer conducted Mr. Rine's hearing. At the hearing the settlement officer explained the hearing process and the fact that neither he nor MSES Consultants, Inc. had a formal installment agreement with respect to the underlying liability. Mr. Rine did not dispute the underlying liability, he only argued that the liability was being paid under the terms of the agreement negotiated as a part of the bankruptcy proceedings and that he did not have any disposable income to pay towards the liability in addition to the monthly payments already being made by and on behalf of MSES Consultants, Inc. Mr. Rine asked for an extension to submit a Form 433-A and substantiating documents, which the settlement officer granted.

Soon after Mr. Rine submitted a completed Form 433-A and financial information. On his Form 433-A Mr. Rine reported \$2,788.89 of income and

\$5,318.47 of monthly expenses. While Mr. Rine's wife was not liable for the penalties under section 6672, Mr. Rine's share of the household expenses is based in part on her income and share of expenses. Consequently, Mr. Rine reported her income as well.

Mr. Rine also reported several assets, including stock holdings, five life insurance policies, and a 401(k) account. In a handwritten addendum to the Form 433-A Mr. Rine explained that he had already borrowed against the 401(k) and insurance policies listed among his assets to provide working capital to MSES Consultants, Inc. He also stated that he had pledged his stock holdings as collateral for a loan, the proceeds of which were also used as working capital for MSES Consultants, Inc.

On November 29, 2016, the settlement officer reviewed the information that Mr. Rine had submitted. She found that based on a combination of the information provided by Mr. Rine, about both his and his wife's income and expenses, and allowable expense standards, Mr. Rine had \$914 per month of disposable income. Based on that finding she proposed a \$914 per month installment agreement. She also found that Mr. Rine had several assets that needed to be liquidated before an installment agreement could be reached. After reviewing the file, the settlement officer discussed the impact that MSES Consultants, Inc.'s bankruptcy proceeding might have on Mr. Rine's case with her supervisor. They concluded that because MSES Consultants, Inc. was in bankruptcy proceedings, and not Mr. Rine, the bankruptcy proceedings had no bearing on the collection action.

On December 6, 2016, the settlement officer explained her conclusions to Mr. Rine over the phone. She noted that while it was "admirable" that he had done as much as he had to support his business, the company's bankruptcy proceeding did not shield him from the collection action. Mr. Rine told the settlement officer that he could not afford the \$914 a month installment agreement and that he could not borrow against his assets. The settlement officer explained that she was sustaining the levy and also informed Mr. Rine of his right to file a petition with the Tax Court.

On December 21, 2016, the Commissioner issued Mr. Rine a notice of determination concerning collection action(s) under section 6230 and/or 6630 of the internal revenue code sustaining the levy. The notice states that the settlement officer verified that all legal and administrative requirements were met with respect to the collection action and that she addressed the issues that Mr. Rine raised, but found that he had disposable income of \$914 a month that could be paid toward the

liability and assets that could be liquidated to reduce the outstanding balance. Mr. Rine rejected that proposal and ultimately the settlement officer sustained the collection action. Finally the notice states that the settlement officer balanced the government's interest in efficient collection of taxes with Mr. Rine's legitimate concern that the collection action be no more intrusive than necessary.

Mr. Rine timely filed a petition for redetermination. In that petition he argues that MSES Consultants, Inc. is paying the underlying liability at a rate of \$10,000 per month, with the payments scheduled to increase to \$45,000 per month once the bankruptcy disclosure statement for MSES Consultants, Inc. has been approved. Mr. Rine also argues that due to his medical costs as a result of his type 2 diabetes, he does not have disposable income to make payments on the liability in excess of the payments made by MSES Consultants, Inc.

On March 14, 2018, the Commissioner filed two motions: a motion to dismiss for mootness as to the taxable period ending June 30, 2014, and a motion for summary judgment. In the motion to dismiss for mootness the Commissioner states that since the petition was filed, payments made by MSES Consultants, Inc. satisfied the outstanding withholding liability. Consequently, there is no outstanding liability and no corresponding collection action.

In the motion for summary judgment the Commissioner argues that the settlement officer did not abuse her discretion in sustaining the collection action. The Commissioner also argues that the settlement officer met all of the requirements under section 6630; she verified that all legal and administrative requirements were met, addressed the issue raised by Mr. Rine and balanced the need for efficient collection of taxes with Mr. Rine's concern that the collection action be no more intrusive than necessary.

The Court ordered a response to the motions. Mr. Rine filed a timely response. In his response he reiterated the arguments in his petition. He also stated that since the hearing his circumstances have changed, further reducing his ability to pay. His wife had an accident that reduced her ability to work and therefore her income, and his health has declined increasing his medical expenses. As a result Mr. Rine and his wife have both less income and higher expenses.

Discussion

There are several questions before the Court. First, should the part of the matter related to the taxable period ending June 30, 2014, be dismissed on the

grounds of mootness. Second, did the settlement officer abuse her discretion by sustaining the collection action against Mr. Rine. And third, if the settlement officer did not abuse her discretion, should the case nonetheless be remanded for further consideration for review of the change in circumstances since the hearing.

The Motion to Dismiss on Grounds of Mootness

In his motion to dismiss on grounds of mootness as to the taxable period ending June 30, 2014, the Commissioner states that since Mr. Rine filed his petition to the Tax Court the underlying withholding liability for that period has been paid in full. The Commissioner argues that there can be no collection action without an underlying liability.

The Tax Court is a court of limited jurisdiction, and our jurisdiction in collection review cases is defined by the scope of the determination that the appeals or settlement officer is required to make.² For the Court to review a collection determination, there must be a collection action. Where there is no liability to collect, there can be no collection action. Consequently, once the Commissioner concedes that there is no unpaid liability for a disputed period upon which a collection action could be based, a collection review proceeding filed in this Court is moot.³ Because there is nothing to collect, the portion of this matter relating to the taxable period ending June 30, 2014, must be dismissed for mootness.

Summary Judgment

The next question we will address is whether the Commissioner is entitled to judgment in his favor as a matter of law. Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in controversy. We may grant summary judgment only if there is no genuine dispute as to any material fact.⁴

²See sec. 7442; Freije v. Commissioner, 125 T.C. 14, 25 (2005).

³See Greene-Thapedi v. Commissioner, 126 T.C. 1, 7 (2006).

⁴Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute as to any material fact.⁵ 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.⁶ When a motion for summary judgment is made and properly supported, the nonmoving party may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine dispute for trial.⁷

Review of Appeals Determinations

In a collection hearing, a taxpayer may raise any issue that is relevant to an unpaid tax or proposed levy, including challenges to the appropriateness of the collection action and offers of collection alternatives.⁸ In addition, a taxpayer may challenge the existence or amount of the underlying tax liability if the taxpayer did not have the opportunity to dispute the liability.⁹ When the taxpayer does not properly raise the underlying liability, we review the Commissioner's collection determination for an abuse of discretion.¹⁰

Mr. Rine did not challenge the underlying liability at any stage in the proceeding. He also received a prior opportunity to contest the underlying liability. Consequently we review the settlement officer's determination for an abuse of discretion.

A taxpayer may prove an abuse of discretion by showing that the Commissioner exercised his discretion arbitrarily, capriciously, or without sound

⁵Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

⁶FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

⁷Rule 121(d).

⁸Sec. 6330(c)(2)(A).

⁹Sec. 6330(c)(2)(B).

¹⁰Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000).

basis in fact or law.¹¹ The determination by the settlement officer must take three things into consideration: (1) verification that the requirements of the applicable law and administrative procedure have been met, (2) issues raised by the taxpayer, and (3) whether any proposed collection action balances the need for efficient tax collection with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.¹²

Here the settlement officer did not abuse her discretion. She addressed the issues raised by Mr. Rine, including his stated inability to pay. Based on the financial information Mr. Rine provided and standards for allowable expenses the settlement officer found that Mr. Rine could make monthly payments of \$914. Mr. Rine rejected that proposal. The settlement officer verified that all applicable legal and administrative requirements with respect to the collection action were met, and she balanced the government's interest in effective tax collection with Mr. Rine's concern that the collection be no more intrusive than necessary.

Remand For Review of a Change in Circumstances

We have previously held that we “have authority to remand a [collection] case for consideration of changed circumstances when remand would be helpful, necessary, or productive.”¹³ Here Mr. Rine has claimed that his wife's income has decreased, increasing his share of household expenses, and that his medical costs have increased. Both changes in circumstances reduce Mr. Rine's ability to pay and would likely affect the outcome of the settlement officer's deliberations. On remand for further consideration the onus lies with Mr. Rine to establish his increased share of household expenses and growing medical costs.

¹¹See Giamelli v. Commissioner, 129 T.C. 107, 111 (2007).

¹²Secs. 6320(c), 6330(c)(3); Lunsford v. Commissioner, 117 T.C. 183, 184 (2001).

¹³Churchill v. Commissioner, T.C. Memo. 2011-182, 102 T.C.M. (CCH) 116, 119 (2011) (“remand is appropriate in cases where there has been a material change in a taxpayer's factual circumstances between the time of the hearing and the time a case lands on our trial calendar.”).

Conclusion

The motion to dismiss on grounds of mootness as to the taxable period ending June 30, 2014, must be granted. The settlement officer did not abuse her discretion during the collection hearing process and met all of the requirements set forth in section 6330. We nonetheless remand this case for further hearing based on Mr. Rine's change in circumstances since his appeals conference. Accordingly it is,

ORDERED, the Commissioner's motion to dismiss on grounds of mootness as to the taxable period ending June 30, 2014, filed March 14, 2018, is granted. It is further

ORDERED, the Commissioner's motion for summary judgment filed March 14, 2018, is denied without prejudice. It is further

ORDERED, this case is remanded to the Commissioner's Office of Appeals for further hearing as prescribed by sections 6320 and 6330. It is further

ORDERED, the hearing shall take place at a reasonable and mutually agreed upon date and time, but no later than June 29, 2018. It is further

ORDERED, the parties shall file a joint status report by July 27, 2018. In lieu of a joint status report, either party may file a status report stating that the other party has reviewed and agreed to the content of the report. It is further

ORDERED, jurisdiction is retained by the undersigned.

(Signed) Ronald L. Buch
Judge

Dated: Washington, D.C.
May 1, 2018