

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

HOMMERTZHEIM ENTERPRISES, INC.,)	
)	
Petitioner,)	CT
)	
v.)	Docket No. 25627-17SL.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This collection case is calendared for trial at the session of the Court commencing November 5, 2018, at Oklahoma City, Oklahoma. Hommertzheim Enterprises, Inc. (Hommertzheim) seeks review under section 6330(d)(1) of the Commissioner’s determination to sustain a levy to recover employment taxes owed for the quarter ended December 2016.¹ The Commissioner moved for summary judgment under Rule 121, arguing that the settlement officer did not abuse her discretion by denying Hommertzheim a collection alternative. The Court ordered Hommertzheim to respond to the Commissioner’s motion, but it has not responded. Because we find that there is no genuine dispute as to any material fact, we grant the Commissioner’s motion for summary judgment.

Background

The liability at issue arose from Hommertzheim’s employment tax return for the quarter ended December 2016. Hommertzheim filed a return for the period showing an amount due but did not pay that amount. The liability now includes interest and penalties. The underlying liability is not at issue.

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

The Commissioner issued a notice of intent to levy with regard to the liability.

In response to the notice, Hommertzheim timely requested a collection hearing. In the request, Hommertzheim checked a box to request an installment agreement. The settlement officer assigned to the case sent a letter to Hommertzheim scheduling a hearing.

In addition to scheduling the hearing, the settlement officer's letter requested certain information from Hommertzheim that she needed to consider the issues raised. The settlement officer informed Hommertzheim that for her to consider a collection alternative, such as an installment agreement, Hommertzheim would need (1) to provide financial information in the form of a completed collection information statement, (2) to file tax returns for all periods for which returns were required of Hommertzheim but had not been filed, and (3) to prove payment of required quarterly tax deposits.

The collection hearing was held, though Hommertzheim had not provided the requested information. During the hearing, Hommertzheim did not dispute the underlying liability or challenge whether the notice of intent to levy was issued in accordance with applicable laws and procedures. Hommertzheim requested an installment agreement. The settlement officer again advised Hommertzheim that she could not consider an installment agreement until all required returns were filed, quarterly deposits were paid, and a collection information statement was provided to her. Hommertzheim agreed to submit the required returns within 14 days.

The information required for the settlement officer to consider an installment agreement was never provided. On the same day as the hearing, Hommertzheim faxed to the settlement officer one of the three returns that Hommertzheim was required to have filed along with two other quarterly returns previously filed. The settlement officer advised Hommertzheim that the newly filed return showed a balance due that must be paid and that the two other returns must still be filed before an installment agreement could be considered. Hommertzheim did not provide the requested returns or a collection information statement. Nor did it pay the required quarterly tax deposits.

The settlement officer, acting on behalf of the Commissioner, issued a determination sustaining the levy. The notice of determination advised

Hommertzheim of its right to petition the Tax Court for review of the determination.

Hommertzheim timely filed a petition. Hommertzheim does not dispute the underlying liability. It argues: “ALL DOCUMENTS WERE FAXED. WE WERE NEVER TOLD WHERE TO MAKE SAID AGREEMENT FOR PAYMENT ARRANGMENT AND THUS WERE UNABLE TO MAKE IT.”

The Commissioner filed a motion for summary judgment under Rule 121(a) for judgment in his favor on all the issues. Hommertzheim has not responded to that motion.

Discussion

We grant a motion for summary judgment only if there is no genuine dispute as to any material fact.² The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute of any material fact.³ 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.⁴

We find that there is no genuine dispute as to any material fact. In the Commissioner’s motion for summary judgment, he asserts that there is no genuine dispute of the facts. He supports this claim by pointing out that the administrative record contradicts the claims made by Hommertzheim in its petition (that it faxed all requested documents and that it did not know how to make a payment). And Hommertzheim did not respond to the Commissioner’s Motion for Summary Judgment to rebut the Commissioner’s claims or in any other way support the statements in its petition.

We review the Commissioner’s determination to sustain the levy for abuse of discretion.⁵ Hommertzheim may prove abuse of discretion by showing that the Commissioner acted arbitrarily, capriciously, or without sound basis in fact or law

² Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 528-529 (1985).

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

⁴ Rule 121(d).

⁵ Goza v. Commissioner, 114 T.C. 176, 181-182 (2000); Sego v. Commissioner, 114 T.C. 604, 610 (2000).

in making the determination.⁶ Section 6630(d)(1) grants Hommertzheim the right, which it exercised, to petition the Tax Court for review of the Commissioner's determination. Section 6330(c)(3) requires the Commissioner, in making his determination, to: (1) verify that the requirements of applicable law and administrative procedure have been met; (2) consider issues raised by the taxpayer; and (3) decide whether any proposed collection action balances the need for efficient collection with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

The Commissioner did not abuse his discretion in making his determination because he complied with the requirements of section 6330(c)(3). The settlement officer established that applicable laws and procedures were complied with and that a balancing analysis was completed. She considered the only issue raised by Hommertzheim: its request for an installment agreement. We have held that it is not an abuse of discretion for the Commissioner to reject a taxpayer's request for a collection alternative when the taxpayer does not provide financial information⁷ or comply with the tax law.⁸ Hommertzheim never furnished the financial information it was required to provide in order for its request for an installment agreement to be considered. While the settlement officer was required to consider issues raised by Hommertzheim, she was not required to consider the propriety of an installment agreement when the taxpayer did not provide the required information.

Conclusion

Because there are no genuine disputes of material fact with respect to the collection action and the Commissioner did not abuse his discretion in sustaining the levy, we must render a decision for the Commissioner as a matter of law.

Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment, filed August 3, 2018, is granted. It is further

⁶ See Giamelli v. Commissioner, 129 T.C. 107, 111 (2007).

⁷ Gardner v. Commissioner, T.C. Memo. 2017-107, Roman v. Commissioner, T.C. Memo. 2004-20.

⁸ Gardner v. Commissioner, T.C. Memo. 2017-107; Hull v. Commissioner, T.C. Memo. 2015-86.

ORDERED AND DECIDED that respondent's determination as set forth in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated November 17, 2017, is sustained.

(Signed) Ronald L. Buch
Judge

Entered: **SEP 25 2018**