

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DOUGLAS C. HENDRIKS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 681-18 L.
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
)	
Respondent.)	

ORDER

This collection review case was brought pursuant to section 6330 and is before the Court on respondent's Motion for Summary Judgment, filed August 14, 2018, pursuant to Rule 121.¹ Respondent seeks to sustain a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated December 15, 2017 (notice of determination), upholding a collection action (levy) for taxable (calendar) years 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015. Although the Court directed petitioner to file a response to respondent's motion, petitioner failed to do so.

Background

The record establishes and/or the parties do not dispute the following background facts.

On June 7, 2017, respondent issued to petitioner a Letter 1058, Notice of intent to levy and notice of your right to a hearing, for petitioner’s unpaid 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015 income tax liabilities, then aggregating \$606,161.39. On June 20, 2017, respondent issued to petitioner a Lien Filing Collection Due Process Notice with respect to petitioner’s unpaid 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015 income tax liabilities.

¹All section references are to the Internal Revenue Code, as amended. All Rule references are to the Tax Court Rules of Practice and Procedure,

On July 4, 2017, petitioner timely faxed a Form 12153, Request for a Collection Due Process or Equivalent Hearing, (1) under section 6320, as to the filing of the notice of Federal tax lien for 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015, and (2) under section 6330, as to the proposed levy action for 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015.

In his October 10, 2017, letter to petitioner, the Settlement Officer scheduled a telephone collection due process hearing with petitioner on November 9, 2018, as to the proposed levy action for 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015. That October 10, 2017, letter, however, fails to mention Appeals' receipt of petitioner's request for a collection due process hearing as to the filing of the notice of Federal tax lien.

On December 15, 2017, respondent issued the notice of determination sustaining the proposed levy action for 2008, 2009, 2011, 2012, 2013, 2014, and 2015. That notice of determination contains no findings or decision as to the appropriateness of the filing of the notice of Federal tax lien for 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015. Among other things, that notice fails to note petitioner's timely request for a collection due process hearing under section 6320 as to the lien action. On January 11, 2018, petitioner filed his petition challenging the notice of determination.

Discussion

This Court may grant summary judgment only if there are no genuine disputes or issues of material fact and the moving party is entitled to judgment as a matter of law. See Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 528-529 (1985). Respondent, as the moving party, bears the burden of proving that no genuine disputes or issues exist as to any material fact and that petitioner is entitled to judgment as a matter of law. FPL Grp., Inc. v. Commissioner, 115 T.C. 544, 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 the inferences drawn from them must be considered in light most favorable to the nonmoving party. FPL Grp., Inc. v. Commissioner, 115 T.C. at 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529.

Among other things, issues are raised in the present case as to whether the notice of determination resolves all relevant issues raised by petitioner relating to the unpaid tax and the lien, including making findings and a decision as to the

appropriateness of the notice of Federal tax lien filed. Sec. 6320(b)(1); secs. 301.6320-1(d)(2), Q&A-D3, 301.6320-1(e)(3), Q&A-E8, Proced. & Admin. Regs.; Synergy Environmental, Inc. v. Commissioner, T.C. Memo. 2014-140, at *2.

Respondent has not established that he is entitled to judgment in his favor as a matter of law. Summary judgment is not appropriate under these circumstances. Accordingly, the Court will deny respondent's motion.²

Premises considered, it is

ORDERED that respondent's Motion for Summary Judgment, filed August 14, 2018, is denied.

(Signed) Peter J. Panuthos
Special Trial Judge

Dated: Washington, D.C.
October 22, 2018

² Because of the apparent failure of the notice of determination to make findings or a decision as to the filing of the notice of Federal tax lien, it may be appropriate to remand this case to the Office of Appeals.