

UNITED STATES TAX COURT
WASHINGTON, DC 20217

BEAU JAMES HOLCOMBE,)
)
Petitioner,)
) **BD**
v.) Docket No. 7981-18SL.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER AND DECISION

This collection review case is before the Court on respondent's Motion for Summary Judgment, with a supporting Declaration, filed pursuant to Rule 121.¹ Respondent seeks to sustain a determination made by the Internal Revenue Service Office of Appeals (Appeals Office) to proceed with the filing of a Federal tax lien and a proposed levy action to collect petitioner's unpaid Federal income taxes for 2009, 2011, 2012, and 2013 (years in issue). Respondent's motion states that petitioner does not object to the motion. Although the Court offered petitioner an opportunity to file a response to respondent's motion, he failed to do so.² As explained below, we will grant respondent's motion.

Background

Petitioner filed delinquent Federal income tax returns for the years in issue and failed to remit full payment. Respondent subsequently assessed the tax petitioner reported, additions to tax, and interest, and issued to petitioner a notice and demand for payment. Petitioner failed to remit full payment.

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

²By failing to file a response to respondent's motion, petitioner waives his right to contest it. Rule 121(d); Aguirre v. Commissioner, 117 T.C. 324, 327 (2001).

On February 10, 2017, respondent issued to petitioner a Notice of Intent to Levy and Notice of Your Right to a Hearing for the years in issue. On February 23, 2017, respondent issued to petitioner a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 for the years in issue. Petitioner timely submitted to the Appeals Office a Form 12153, Request for a CDP or Equivalent Hearing, in which he checked the box for “I cannot pay balance” and handwrote “I can pay \$500.00 a month (I started a new job)”.

During the course of the administrative hearing that followed, the Appeals Office requested that petitioner file tax returns for the years 2014, 2015, and 2016, and submit a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals. This information was necessary to permit the Appeals Office to evaluate petitioner’s eligibility for an installment agreement or for currently not collectible status. Petitioner failed to submit the requested documents.

On March 23, 2018, the Appeals Office issued to petitioner a notice of determination concerning collection action(s) under section 6320 and/or 6330 (notice of determination), sustaining the filing of the lien and the proposed levy collection action. Petitioner invoked the Court’s jurisdiction by filing a timely petition for review of the notice of determination. Petitioner states in the petition that he needs more time to get his past taxes done and that “I keep getting told no payment plan will be accepted till I get my back taxes done”.

Discussion

Summary judgment may be granted with respect to all or any part of the legal issues in controversy “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). Respondent’s Motion for Summary Judgment is well founded based on the averments therein and the declaration and exhibits attached thereto. We conclude that there is no dispute as to a material fact and that respondent is entitled to judgment as a matter of law sustaining the notice of determination upon which this case is based.

If the taxpayer’s underlying tax liability is not in dispute, as is the case here, we review the Appeals Office’s administrative determination for abuse of discretion. Goza v. Commissioner, 114 T.C. 76, 181-182 (2000). 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).

The record shows that petitioner is not in compliance with filing requirements for the taxable years 2014, 2015, and 2016, and that he failed to produce the financial information that the Appeals Office needed to evaluate his eligibility for an installment agreement. It is well settled that the Appeals Office is justified in rejecting a proposed collection alternative, such as an installment agreement, if the taxpayer fails to submit requested financial information or is not in compliance with Federal tax laws. See, e.g., Pough v. Commissioner, 135 T.C. 344, 351 (2010).

The Appeals Office properly verified that the requirements of any applicable law and administrative procedures were met in the processing of petitioner’s case and that the filing of the Federal tax lien and proposed levy balance the Government’s interest in the efficient collection of taxes with petitioner’s concerns that the collection action be no more intrusive than necessary. In sum, the Appeals Office did not abuse its discretion in this case.

Upon due consideration and for cause, it is

ORDERED that respondent’s Motion for Summary Judgment, filed October 3, 2018, is granted. It is further

ORDERED AND DECIDED that respondent’s notice of determination concerning collection actions under section 6320 and/or 6330, dated March 23, 2018, upon which this case is based, is sustained.

**(Signed) Daniel A. Guy, Jr.
Special Trial Judge**

ENTERED: **DEC 20 2018**