



United States Tax Court

Washington, DC 20217

ALBERTA L. REYNOLDS,)	
)	
Petitioner)	
)	
v.)	Docket No. 6371-19SL.
)	
Commissioner of Internal Revenue,)	
)	
Respondent)	

ORDER AND DECISION

This case is before the Court on a petition for review of a Supplemental Notice of Determination Concerning IRS Collection Actions under Internal Revenue Code Sections 6320 or 6330, dated June 5, 2020, sustaining a notice of intent to levy for petitioner’s taxable years 2013 and 2015 (supplemental notice of determination).^{1 2}

On September 8, 2020, respondent filed a Motion for Summary Judgment. The Court ordered petitioner to respond on or before October 30, 2020. To this date, the Court has received no response or objection to respondent’s motion.

Background

The following facts are derived from the parties’ pleadings and motion papers, including exhibits and affidavits. See Rule 121(b). Petitioner resided in Alabama when she timely filed her petition.

¹ Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code in effect at all relevant times.

² On July 27, 2020, the Court dismissed petitioner’s taxable year 2014 on the ground of mootness. Petitioner’s taxable years 2013 and 2015 remain in issue.

Tax Returns

Petitioner untimely filed her 2013 tax return on June 22, 2015, and reported tax due. Petitioner failed to remit payment for the tax shown due on her 2013 tax return. Petitioner was granted and entered into an installment agreement on June 23, 2015, but it was terminated on October 17, 2016, after only one payment was made.

Petitioner timely filed her 2015 tax return on April 15, 2016, reporting tax due. Petitioner paid the full amount of the tax due shown on the return. On July 4, 2016, petitioner was issued Notice CP11, Notice of Math Error with a balance due.³ Petitioner's tax liability was recalculated based on a math error.

Notice CP90 and Collection Due Process Hearing

On March 19, 2018, respondent issued to petitioner a Notice CP90, Intent to seize your assets and notice of your right to a hearing, for her tax years 2013, 2014, and 2015 (levy notice). In response to the levy notice petitioner timely submitted a Form 12153, Request for a Collection Due Process or Equivalent Hearing (CDP hearing request). Petitioner checked the box for collection alternatives of an installment agreement and inability to pay balance. Petitioner also included a reason for requesting a CDP hearing in the "other" section. She stated: "I am willing to make payments on whatever I owe, but I think the amount in the CP90 notice is a bit high. Due to financial circumstances beyond my ability to control, I am unable to pay the entire amount at once. If it is determined that I owe and how much is owed, I would be willing to [make] payments or have a reasonable sum deducted from my social security check each month."

Petitioner's CDP hearing was assigned to settlement officer (SO) Salinas in respondent's Appeals Office (Appeals). On August 13, 2018, SO Salinas issued petitioner a letter acknowledging receipt of her CDP hearing request, scheduling a telephone CDP hearing for September 19, 2018, at 10:00 a.m. Pacific time, and providing relevant issues to discuss. Additionally, petitioner was informed in the letter that she had the opportunity to dispute her liabilities if she did not receive a notice of deficiency or otherwise have an opportunity to dispute her liabilities. In the letter, SO Salinas also requested that petitioner provide by September 7, 2018, a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals; a signed copy of her 2016 tax return; the last three months of income and bank statements; and documents to substantiate her

³ The issuance of Notice CP11 is reflected on petitioner's account transcript for 2015, but a copy of the notice was not included in the record.

expenses. SO Salinas explained in the letter that she needed the documentation in order to consider collection alternatives or petitioner's request for financial hardship relief.

Before the CDP hearing, SO Salinas verified that proper assessments were made and that proper mailing of the notice and demand for payment was issued to petitioner for the years in issue. The CDP hearing was held on September 19, 2018. SO Salinas explained to petitioner the purpose of the hearing and her right to petition the Tax Court for review of Appeals' determination. After the CDP hearing, petitioner sent SO Salinas the requested documentation, including a complete Form 433-A, financial statements, utility statements, and a 2016 tax return printout from a third-party return processor showing the status as "Processing". SO Salinas' review of petitioner's information showed an ability to pay and the SO could not consider a collection alternative because petitioner's 2016 tax return was never printed, signed, or sent to the Internal Revenue Service (IRS).

SO Salinas sustained the levy notice and issued to petitioner a Notice of Determination Concerning Collection Actions under IRC Sections 6320 or 6330 of the Internal Revenue Code, dated March 8, 2019, sustaining a notice of intent to levy for petitioner's taxable years 2013, 2014, and 2015 (notice of determination). Petitioner timely petitioned this Court for review of the notice of determination. On November 22, 2019, this Court remanded this case to Appeals for reconsideration, for consideration of petitioner's collection alternative, and for consideration of whether petitioner is currently not collectible. The Court also ordered petitioner to provide Appeals with updated financial information and a printout of her 2016 tax return.

Remand and Supplemental Notice of Determination

SO Salinas reviewed petitioner's then-current account transcripts and determined that petitioner still had not submitted her 2016 tax return and that her 2018 tax return was rejected when she tried to electronically file it. On January 6, 2020, SO Salinas issued a letter to petitioner acknowledging the remand and scheduling a supplemental telephone CDP hearing for February 6, 2020. In the letter, SO Salinas requested from petitioner signed copies of her 2016 and 2018 tax returns, as well as, an updated Form 433-A with supporting financial information. SO Salinas explained in the letter that the tax returns and updated financial documents were needed to determine financial hardship or collection alternatives.

The supplemental CDP hearing was held on February 6, 2020. Petitioner did not provide SO Salinas with updated financial documents or information, nor did she provide signed copies of her 2016 and 2018 tax returns. Petitioner stated

that she was unaware that she needed to provide updated financial information, despite the Court's November 22, 2019, Order ordering petitioner to provide updated information and SO Salinas' January 6, 2020, letter requesting updated information and tax returns. Petitioner informed SO Salinas that her financial information had not changed other than a decrease in rent. SO Salinas informed petitioner that she cannot enter into a payment plan until her delinquent tax returns are filed. SO Salinas also noted that if petitioner's financial information had not changed, she still showed an ability to pay the underlying liabilities.

On June 5, 2020, Appeals issued to petitioner a supplemental notice of determination sustaining the levy notice as to petitioner's taxable years 2013 and 2015.

Discussion

Summary judgment is intended to expedite litigation and avoid unnecessary and time-consuming trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). When there is no genuine dispute as to any material fact, the Court may grant summary judgment as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The moving party must prove that no genuine dispute as to any material fact exists and that he is entitled to judgment as a matter of law. FPL Grp., Inc. & Subs. v. Commissioner, 115 T.C. 554, 559 (2000). In deciding whether to grant summary judgment, the Court considers the facts, and the inferences drawn from the facts, in the light most favorable to the nonmoving party. See id.

Petitioner has raised no dispute as to any material fact, nor has petitioner objected to respondent's motion for summary judgment.

I. Sections 6330 and 6331

Section 6331(a) authorizes the Secretary to levy against property and property rights where a taxpayer liable for taxes fails to pay those taxes within 10 days after notice and demand for payment. Section 6331(d) requires the Secretary to send the taxpayer written notice of the Secretary's intent to levy, and section 6330(a) requires the Secretary to send to the taxpayer written notice of her right to a section 6330 hearing at least 30 days before any levy. Murphy v. Commissioner, 125 T.C. 301, 307 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006). Respondent issued petitioner a levy notice on March 19, 2018.

If the taxpayer requests a CDP hearing, the hearing is conducted by Appeals. Sec. 6330(b)(1). At the hearing, the taxpayer may raise any relevant issue relating to the unpaid tax or the proposed levy. Sec. 6330(c)(2)(A). Relevant issues

include any collection alternatives, challenges to the appropriateness of the collection action, and spousal defenses. Id.

After the CDP hearing, Appeals must determine whether proceeding with the proposed levy is appropriate. In making that determination, Appeals is required to consider relevant issues raised by the taxpayer and also whether the proposed levy action appropriately balances the need for efficient collection of taxes with the taxpayer's concerns regarding the intrusiveness of the proposed collection action. Sec. 6330(c)(3). In addition, the settlement officer must verify that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(c)(1), (3); Lunsford v. Commissioner, 117 T.C. 183, 184 (2001). Once the settlement officer makes a determination, the taxpayer may appeal the determination to the Tax Court. Sec. 6330(d)(1). Petitioner timely filed a petition for review of the notice of determination.

The Court remands a case to Appeals when the taxpayer did not have a proper hearing and a supplemental hearing is necessary or will be productive. Lunsford v. Commissioner, 117 T.C. at 189. The hearing on remand is a supplement to the taxpayer's original CDP hearing and not a new hearing. Kelby v. Commissioner, 130 T.C. 79, 86 (2008). When a case is remanded to Appeals and supplemental notices of determination are issued, the Court reviews the position taken in the last supplemental notice of determination. Kelby v. Commissioner, 130 T.C. at 86; see also Leago v. Commissioner, T.C. Memo. 2012-39.

II. Standard of Review

In reviewing the determination, the Court has held that where the validity of the underlying tax liability is properly at issue, the Court will review the matter de novo. Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181 (2000). Where the validity of the underlying tax liability is not properly at issue, however, the Court will review the Commissioner's determination for abuse of discretion. Sego v. Commissioner, 114 T.C. 610; Goza v. Commissioner, 114 T.C. 181. A settlement officer has abused her discretion if the determination is arbitrary, capricious, or without sound basis in fact or law. Giamelli v. Commissioner, 129 T.C. 107, 111 (2004).

Section 6330(c)(2)(B) provides that a person may challenge "the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability." The Court has held that "it is reasonable to interpret the term 'underlying tax liability' as a reference to the amounts that the Commissioner assessed for a particular tax period." Montgomery

v. Commissioner, 122 T.C. 7 (2004). Thus, “‘underlying tax liability’ may encompass an amount assessed following the issuance of a notice of deficiency under section 6213(a), an amount ‘self-assessed’ under section 6201(a), or a combination of such amounts.” Id. at 7-8. Further, an “underlying tax liability” may also encompass “an additional amount assessed by respondent pursuant to the ‘math error’ procedures under section 6213(b)(1).” Perkins v. Commissioner, 129 T.C. 58, 64 (2007).

The underlying tax liability for 2013 was reported by petitioner as due on her tax return. Under Montgomery v. Commissioner, 122 T.C. 7, petitioner was entitled to challenge that portion of her underlying liability. Additionally, the underlying tax liability for 2015 was attributable to the additional assessment made by respondent pursuant to section 6213(b)(1). Under Perkins v. Commissioner, 129 T.C. 58, petitioner was entitled to challenge that portion of her underlying liability. In the August 13, 2018, letter issued to petitioner, she was informed that she had the opportunity to dispute her liabilities. However, at the initial CDP and the supplemental CDP hearing, petitioner did not dispute her underlying liabilities for 2013 and 2015.

In reviewing a determination under section 6330(c)(2) the Court considers only issues that the taxpayer properly raised during the CDP hearing. Sec. 301.6330-1(f)(2), Q&A-F3, Proced. & Admin. Regs.; see Giamelli v. Commissioner, 129 T.C. at 115. Therefore, “[a] taxpayer is precluded from disputing the underlying liability [in this Court] if it was not properly raised in the CDP hearing.” Thompson v. Commissioner, 140 T.C. 173, 178 (2013). A taxpayer during a CDP hearing does not properly raise an issue, including an issue concerning its underlying tax liability, if it “fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.” Sec. 301.6330-1(f)(2), Q&A-F3, Proced. & Admin. Regs.; see Pough v. Commissioner, 135 T.C. 344, 349 (2010). The taxpayer must also raise the issue in his petition to this Court. Rule 331(b)(4) (“Any issue not raised in the assignments of error shall be deemed to be conceded.”). While petitioner did raise her underlying liabilities in her petition to the Court, they are not properly before the Court because she did not raise her underlying liabilities during her CDP hearing. See Giamelli v. Commissioner, 129 T.C. at 115.

III. Supplemental CDP Hearing and Determination

Appeals does not abuse its discretion when the settlement officer sustains a proposed collection action on the basis of the taxpayer’s failure to comply with reasonable requests to supply current financial information or other relevant information, such as proof of tax compliance. See Phillips v. Commissioner, T.C.

Memo. 2017-13, at *9; Shanley v. Commissioner, T.C. Memo. 2009-17, slip op. at 11-10. Rather, when Appeals gives the taxpayer an adequate time-frame to submit all requested items, and the taxpayer fails to do so, Appeals cannot be said to have abused its discretion when it renders a determination on the basis of record before it. See Pough v. Commissioner, 135 T.C. at 351-352. Generally, the taxpayer is responsible for participating in the CDP hearing she requests and to provide the settlement officer with all relevant information, including financial information, necessary to facilitate the settlement officer's consideration of the facts and issues involved in her case. Sec. 301.6330-1(e)(1), *Proced. & Admin Regs.*

On remand petitioner had ample opportunity to file her delinquent tax returns and present updated financial information to SO Salinas. In the Court's November 22, 2019, Order remanding this case to Appeals, the Court ordered petitioner to provide updated financial information. Petitioner was also put on notice by the Court's Order that her 2016 tax return may not have been processed or submitted to the IRS. In the January 6, 2020, letter, SO Salinas requested from petitioner signed copies of her 2016 and 2018 tax returns. Petitioner did not provide SO Salinas with either signed copies of her 2016 and 2018 returns or updated financial information in order for SO Salinas to consider collection alternatives or financial hardship.

In making the determination whether to sustain the proposed levy, section 6330(c)(3) requires the settlement officer to consider: (1) whether the requirements of any applicable law or administrative procedure have been met; (2) any issues appropriately raised by the taxpayer; and (3) whether the collection actions balance the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. See Lunsford v. Commissioner, 117 T.C. at 184.

SO Salinas verified that the levy notice issued to petitioner reflected amounts due as a result of petitioner's 2013 self-assessed tax return and the 2015 tax return math error. SO Salinas also verified that the 2014 tax liability had been paid in full and therefore the proposed levy would not be sustained for 2014. The record reflects that SO Salinas properly verified that the requirements of all applicable law and administrative procedure were met in the processing of petitioner's case and that the collection action balances the Government's need for the efficient collection of taxes with petitioner's concerns that the collection action be no more intrusive than necessary.

IV. Conclusion

Respondent's determination to sustain the levy notice was not an abuse of discretion. Therefore, the Court will sustain the collection action as set forth in the supplemental notice of determination.

The Court notes that nothing prevents petitioner from providing her delinquent tax returns to the IRS or other appropriate financial information in the future so that it may consider collection alternatives, but not as part of this proceeding or subject to review by this Court.

Giving due regard to the assertions contained in respondent's motion for summary judgment, and petitioner's failure to respond to the motion or other orders of this Court, it is

ORDERED that respondent's November 20, 2019, Motion for Summary Judgment is granted. It is further

ORDERED and DECIDED that respondent may proceed with collection action of petitioner's Federal income tax liabilities for 2013 and 2015 as set forth in the Supplemental Notice of Determination Concerning IRS Collection Actions under Internal Revenue Code Sections 6320 or 6330, dated June 5, 2020.

**(Signed) Elizabeth Crewson Paris
Judge**