UNITED STATES TAX COURT
WASHINGTON, DC 20217

LESLIE D. RASMUSSEN,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 7428-17 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER AND DECISION

This matter is before the Court on respondent's Motion for Summary Judgment, filed October 12, 2017. Respondent seeks to sustain a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code dated March 2, 2017, upholding proposed levy action for the taxable years 2011 and 2012.[1]

There are no genuine issues of material fact in this case, and the Court concludes that respondent is entitled to judgment as a matter of law as provided herein.

Petitioner resided in Nebraska at the time the petition in this case was filed.

A. Background

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

Petitioner failed timely to file a Federal income tax returns for the 2011 and 2012 taxable years, and the Internal Revenue Service (IRS) prepared substitutes for return pursuant to section 6020(b). Notices of deficiency for 2011 and 2012 were then issued to petitioner on July 13, 2015, and July 6, 2015, respectively. The record indicates that the notices were sent by certified mail to petitioner's last known and current address of record. A timely petition was not filed in response to either notice of deficiency. Petitioner has not disputed receipt of the notices of deficiency. Assessments were made and notices of balance due were issued, but amounts remained unpaid.

On October 31, 2016, the IRS issued to petitioner Notices CP90, Intent to seize your assets and notice of your right to a hearing, for the 2011 and 2012 liabilities, then aggregating $49,959.76, which notices also explained the process for requesting a collection due process

[1] Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

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(CDP) hearing. Petitioner thereafter timely submitted a Form 12153, Request for a Collection Due Process or Equivalent Hearing, in which petitioner disputed the proposed levy actions and expressed interest in a collection alternative in the form of an offer in compromise, along with selecting the box for "I Cannot Pay Balance". In further explanation of her position, petitioner stated: "A levy would cause a severe financial hardship and the taxpayer would like to preserve her rights to tax court."

Subsequently, a Settlement Officer (SO) of the IRS Office of Appeals sent to petitioner a letter dated January 18, 2017, scheduling a telephone hearing for February 16, 2017, and, to the extent that petitioner wished the SO to consider collection alternatives, requesting financial information including Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, with supporting attachments documenting income, expenses, assets, etc., and proof that estimated tax payments were paid in full for the year to date. The letter generally requested that such items be provided within 14 days, with the exception of tax returns, for which 21 days was allotted.

The telephone conference was then held as scheduled on February 16, 2017, between petitioner's representative, Yawar Jafri with National Tax Experts, and the SO. Petitioner had not yet submitted a Form 433-A or any other financial information, and Mr. Jafri concurred that he, too, had received no such materials from petitioner. Nonetheless, during the hearing, Mr. Jafri continued to voice interest in a collection alternative, asking about a streamlined installment agreement. The SO advised that the amount required under the streamlined installment agreement procedures would be $669 per month and petitioner would have to make 2016 estimated tax payments. Petitioner was afforded until February 23, 2017, to agree to the streamlined installment agreement or to provide financial information.

The SO did not receive anything from petitioner by February 23, 2017, and she left a message for Mr. Jafri on February 24, 2017, inquiring further. A return voicemail message from Mr. Jafri advised that he had not received anything from, or talked to, petitioner.

At that juncture, through review of files and transcripts the SO verified that requirements of applicable law and administrative procedure had been met by verifying the timeliness of assessment of amounts in dispute and verifying that appropriate collection notices had been sent to petitioner. The SO balanced the need for efficient collection of taxes with the legitimate concern of petitioner that any collection be no more intrusive than necessary by finding that no alternative collection action would be available or proper at that time given petitioner's inability and declination to challenge the underlying liability and failure to submit financial information that could establish the propriety of an alternative.

On March 2, 2017, respondent issued to petitioner the aforementioned Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code, sustaining respondent's proposed levy actions for 2011 and 2012.

On April 3, 2017, petitioner filed the petition commencing this case. In that document, petitioner expressed disagreement with the notice of determination as follows: "Because I failed to submit documentation because of family matters. There wasn't enough information to base decision on. Also, once I figure taxes for 2016, I anticipate a refund on loss of farming."

Petitioner next listed broad categories of expenses ("Mortgage, Vehicle, Loan, Wages, Living expenses") but offered no details. Respondent then filed the Motion for Summary Judgment presently before the Court on October 12, 2017. By Order dated October 17, 2017, petitioner was directed to file an objection, if any, to respondent's motion, on or before November 7, 2017. To date, nothing has been received from petitioner.

B. Discussion

1. Summary Judgment

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy. Rule 121(a). The Court may grant summary judgment only if there are no genuine disputes or issues of material fact. Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

Respondent, as the moving party, bears the burden of proving that no genuine dispute or issue exists as to any material fact and that respondent is entitled to judgment as a matter of law. FPL Group, Inc. v. Commissioner, 115 T.C. 554, 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 the light most favorable to the nonmoving party. FPL Group, Inc. v. Commissioner, 115 T.C. 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529. The party opposing summary judgment must set forth specific facts which show that a question of genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988); King v. Commissioner, 87 T.C. 1213, 1217 (1986); Shepherd v. Commissioner, T.C. Memo. 1997-555. When the moving party has carried its burden, however, the party opposing the summary judgment motion must do more than simply show that "there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The party opposing the motion "may not rest upon the mere allegations or denials of his pleading, but * * * must set forth specific facts showing there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Where the record viewed as a whole could not lead a reasonable trier of fact to find for the non-moving party, there is no "genuine issue for trial". Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. at 587.

Under Rule 121(d), if the adverse party does not respond to the motion for summary judgment, then this Court may enter a decision where appropriate against that party. See King v. Commissioner, 87 T.C. at 1217; Shepherd v. Commissioner, T.C. Memo. 1997-555. Petitioner has not responded to the motion for summary judgment. The Court could grant respondent's motion on that ground alone. However, even if the Court did not rely on that basis, the record in this matter shows that respondent is entitled to summary judgment on the merits of the case.

2. Hearings Under Section 6330

Section 6331(a) authorizes the Secretary to levy upon property and property rights of a taxpayer liable for taxes who fails to pay those taxes within 10 days after a notice and demand for payment is made. Section 6331(d) provides that the levy authorized in section 6331(a) may be made with respect to "unpaid tax" only if the Secretary has given written notice to the taxpayer 30 days before the levy. Section 6330(a) requires the Secretary to send a written notice to the taxpayer of the amount of the unpaid tax and of the taxpayer's right to a section 6330 hearing at least 30 days before the levy is begun.

If a section 6330 hearing is requested, the hearing is to be conducted by the IRS Office of Appeals, and, at the hearing, the officer conducting the conference must verify that the requirements of any applicable law or administrative procedure have been met. Sec. 6330(b)(1), (c)(1). The taxpayer may raise at the hearing "any relevant issue relating to the unpaid tax or the proposed levy". Sec. 6330(c)(2)(A). The taxpayer may also raise challenges to the existence or amount of the underlying tax liability at a hearing if the taxpayer did not receive a statutory notice of deficiency with respect to the underlying tax liability or did not otherwise have an opportunity to dispute that liability. Sec. 6330(c)(2)(B); see Montgomery v. Commissioner, 122 T.C. 1 (2004).

This Court has jurisdiction under section 6330 to review the Commissioner's administrative determinations. Sec. 6330(d); see Iannone v. Commissioner, 122 T.C. 287, 290 (2004). Where the underlying tax liability is properly at issue, the Court reviews the determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Where the underlying tax liability is not at issue, the Court reviews the determination for abuse of discretion. Id. at 182.

a. Underlying Tax Liability

The record in this proceeding indicates that, throughout the administrative process, petitioner has at no time sought to challenge the underlying tax liabilities for the 2011 and 2012 years. The general rule in this Court is that, on appeal of a collection determination, the Court will limit its review to those issues properly raised during the collection hearing. Giamelli v. Commissioner, 129 T.C. 107, 114-115 (2007); Magana v. Commissioner, 118 T.C. 488, 493 (2002). See also Rule 331(b)(4) (advising that any issue not raised in the petition shall be deemed conceded).

Accordingly, the Court will not consider any adjustment to the amount of the underlying 2011 and 2012 liabilities and will review respondent's determination for abuse of discretion. Goza v. Commissioner, 114 T.C. at 182. Whether an abuse of discretion has occurred depends upon whether the exercise of discretion is without reasonable basis in fact or law. Freije v. Commissioner, 125 T.C. 14, 23 (2005); Ansley-Sheppard-Burgess Co. v. Commissioner, 104 T.C. 367, 371 (1995).

b. Spousal Defenses and Challenges to the Appropriateness of Collection Actions

Similarly, petitioner has not at any time raised spousal defenses or challenges to the appropriateness of collection actions. Thus, the Court does not consider those matters here. See Giamelli v. Commissioner, 129 T.C. at 114-115; Magana v. Commissioner, 118 T.C. 493); see also Rule 331(b)(4).

c. Collection Alternatives

During the collection proceeding and insofar as might concern any collection alternative, petitioner's initial hearing request had indicated interest in an installment agreement and had noted an inability to pay the balance, which can signal a need for currently not collectible status. During the hearing itself, a streamlined installment agreement was also discussed.

Both installment agreements and offers in compromise are forms of collection alternatives. As a prerequisite for consideration or approval by the IRS of such types of collection alternatives, or of the administrative relief afforded by currently not collectible status, it is generally incumbent upon the taxpayer to provide requested financial information, for example to permit evaluation of ability to pay. See, e.g., secs. 6159, 7122, I.R.C.; Kindred v. Commissioner, 454 F.3d 688, 697 (7th Cir. 2006); Olsen v. United States, 414 F.3d 144, 151 (1st Cir. 2005); Murphy v. Commissioner, 125 T.C. 301, 315 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006); Wright v. Commissioner, T.C. Memo. 2012-24. Similarly, IRS guidelines with respect to collection alternatives direct that the taxpayer must be in current compliance with filing and estimated payment obligations. E.g., McLaine v. Commissioner, 138 T.C. 228, 243 (2012); Giamelli v. Commissioner, 129 T.C. at 115-116; Taylor v. Commissioner, T.C. Memo. 2009-27. Moreover, it is not considered an abuse of discretion for the IRS Office of Appeals to decline to consider an installment agreement or offer in compromise where no specific collection alternative proposal is proposed to the reviewing officer. See, e.g., Kindred v. Commissioner, 454 F.3d at 696; Kendricks v. Commissioner, 124 T.C. 69, 79 (2005). Stated otherwise, it is the obligation of the taxpayer, not the reviewing officer, to start negotiations regarding a collection alternative by making in the first instance a specific proposal.

Here, the record reflects that during the administrative hearing process petitioner failed to submit requested financial materials that could establish qualification for a collection alternative. Petitioner also apparently declined to pursue the streamlined installment agreement offer presented by the SO. Conversely, it is clear that the SO provided ample warning, instruction, and opportunity for petitioner to remedy the situation, so as to satisfy the conditions and open the door for alternatives. Caselaw highlights the lack of abuse in analogous scenarios. See, e.g., Murphy v. Commissioner, 125 T.C. at 315 ("An appeals officer does not abuse her discretion when she fails to take into account information that she requested and that was not provided in a reasonable time."); Dinino v. Commissioner, T.C. Memo. 2009-284 (noting consistency with IRS guidelines stating that, for purposes of good case management, no more than 14 days should be allowed for submission of financial information); Gazi v. Commissioner, T.C. Memo. 2007-342 ("There is no requirement that the Commissioner wait a certain amount of time before

making a determination as to a proposed levy."); see also sec. 301.6330-1(e)(3), Q & A–E9, Proced. & Admin. Regs.

In sum, caselaw establishes that it is not an abuse of discretion for the IRS Office of Appeals to reject collection alternatives and sustain proposed collection action on the basis of the failure of a taxpayer to submit requested financial information establishing qualification or to achieve current compliance with filing obligations. See, e.g., Giamelli v. Commissioner, 129 T.C. at 115-116; Taylor v. Commissioner, T.C. Memo. 2009-27; Roman v. Commissioner, T.C. Memo. 2004-20.

d. Verification of Procedures

It is well settled that no particular form of verification is required; that no particular document need be provided to taxpayers at a hearing conducted under section 6330; and that Forms 4340, Certificate of Assessments, Payments, and Other Specified Matters, and transcripts of account may be used to satisfy the requirements of section 6330(c)(1). Roberts v. Commissioner, 118 T.C. 365, 371 n.10 (2002), aff'd, 329 F.3d 1224 (11th Cir. 2003); Nestor v. Commissioner, 118 T.C. 162, 166 (2002); Lunsford v. Commissioner, 117 T.C. 183 (2001). The Forms 4340, transcripts, and materials that are referenced in and/or attached as exhibits to respondent's motion for summary judgment and accompanying declaration, along with the statements of the officer in the notice of determination, show that required assessment and collection procedures were followed.

The Court concludes that there are no genuine issues of material fact for trial and that respondent's determination to proceed with collection was not an abuse of discretion.

C. Conclusion

Drawing all factual inferences against respondent, the Court concludes that there are no genuine issues of material fact in this case and that respondent is entitled to judgment as a matter of law.

Finally, in reaching the conclusions described herein, the Court has considered all arguments made, and, to the extent not mentioned above, we find them to be moot, irrelevant, or without merit.

Premises considered, it is

ORDERED that respondent's Motion for Summary Judgment, filed October 12, 2017, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with collection action for taxable years 2011 and 2012, as determined in the notice of determination, dated March 2, 2017, upon which this case is based.

(Signed) Peter J. Panuthos
Special Trial Judge

ENTERED: **NOV 29 2017**