



United States Tax Court

Washington, DC 20217

MUNIR AHMAD,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 37926-21L.

ORDER & DECISION

This case arises under our jurisdiction pursuant to section 6320(c) and is before the Court on respondent's motion for summary judgment, filed August 26, 2022.¹ Petitioner, Munir Ahmad (Mr. Ahmad), did not timely file a reply in opposition of respondent's motion for summary judgment.² Mr. Ahmad resided in Pennsylvania when he petitioned this Court.

Mr. Ahmad presently seeks review of a Notice of Determination Concerning Collection Actions under IRC Sections 6320 or 6330 of the Internal Revenue Code (Notice of Determination) issued by respondent on November 23, 2021, which sustained the filing of a notice of federal tax lien for tax years 2014, 2015, 2016, 2017, and 2018. Mr. Ahmad does not challenge his underlying income tax liabilities for those tax years. Instead, he alleges that respondent's collection action imposes a hardship on him since he is unemployed and receiving public assistance. Mr. Ahmad also alleges generally that "some correspondence" was "given to [him] late." For the reasons set forth below, we will grant respondent's motion.

Background

The following facts are drawn from the parties' pleadings and motion papers, including accompanying declarations and exhibits, and are not in dispute.

¹ Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

² On September 1, 2022, the Court ordered Mr. Ahmad to file a response to respondent's motion for summary judgment by September 20, 2022.

Entered and Served 09/27/22

On February 11, 2020, respondent issued a Letter 3172, Notice of Federal Tax Lien and Your Right to a Hearing Under IRC 6320, (NFTL) to Mr. Ahmad. The notice reflected unpaid income tax liabilities for tax years 2014, 2015, 2016, 2017, and 2018. The NFTL reflected total unpaid income tax liabilities of \$17,733 as of February 11, 2020. The NFTL gave Mr. Ahmad the opportunity to request a hearing pursuant to section 6320 on Form 12153, Request for a Collection Due Process or Equivalent Hearing, if such request was made by March 20, 2020.³

On March 20, 2020, Mr. Ahmad mailed a timely hearing request on Form 12153. In this request, Mr. Ahmad indicated that he could not pay the balance due. He stated that he was unemployed and that his income, which was derived from public assistance, exceeded his expenses. Consequently, he indicated that he could not pay the balance due and requested a collection alternative of “Currently Unable to Pay.”⁴

On June 14, 2021, Settlement Officer Teresa George (SO George) was assigned to handle the hearing pursuant to section 6320 that Mr. Ahmad requested. SO George confirmed that she had no prior involvement with Mr. Ahmad or the tax liabilities at issue. On the same day, SO George sent a letter to Mr. Ahmad acknowledging receipt of his hearing request and scheduling a telephone conference on August 4, 2021. The letter also asked Mr. Ahmad to submit a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and signed income tax returns for the 2019 and 2020 tax years to enable SO George to consider collection alternatives.

SO George did not receive the Form 433-A or the requested income tax returns. Mr. Ahmad did not contact SO George to reschedule the telephone conference that had been scheduled for August 4, 2021. On August 4, 2021, SO George called Mr. Ahmad at the time listed in her June 14, 2021, letter to Mr. Ahmad but was unsuccessful in reaching him.⁵ SO George sent a follow-up letter to petitioner on August 4, 2021, which requested a response from Mr. Ahmad within 14 days, but she did not receive a response from him.

³ The NFTL referred to Form 12153 as “Request for a Collection Due Process Hearing” rather than its correct title, “Request for a Collection Due Process or Equivalent Hearing.” This difference is immaterial to our analysis.

⁴ Respondent interpreted the request for a collection alternative of “Currently Unable to Pay” as a request for currently not collectible status. *See generally* Internal Revenue Manual 5.16.1 (Apr. 13, 2021).

⁵ The Notice of Determination indicates that SO George left a voicemail message for Mr. Ahmad on the same date requesting that he return her call, but he did not return her call. However, SO George’s case notes indicate that Mr. Ahmad’s voicemail box was full and that she was unable to leave him a message, without any clear indication that she was later successful in leaving him a message. Given the conflicting record, the Court views the facts in the light most favorable to Mr. Ahmad and assumes for purposes of this Order & Decision that SO George never left him a voicemail on August 4, 2021. *See Dahlstrom v. Commissioner*, 85 T.C. 812, 821 (1985).

On November 23, 2021, the Internal Revenue Service (IRS) Independent Office of Appeals (Appeals Office) issued the Notice of Determination to Mr. Ahmad for his income tax liabilities for the 2014, 2015, 2016, 2017, and 2018 tax years.⁶ SO George verified that all applicable legal and procedural requirements had been met with respect to the income tax liabilities for Mr. Ahmad's 2014, 2015, 2016, 2017, and 2018 taxable years. SO George also considered the issues that Mr. Ahmad raised and whether the proposed collection action balanced the need for the efficient collection of taxes with Mr. Ahmad's legitimate concern that any collection action be no more intrusive than necessary. The Notice of Determination states that Mr. Ahmad did not respond to the two letters sent to him, nor did he provide any requested financial information necessary to consider a collection alternative.

On December 30, 2021, Mr. Ahmad filed a petition with the Court (Petition) challenging the Notice of Determination issued by respondent on November 23, 2021, which sustained the lien for Mr. Ahmad's unpaid income tax liabilities for the 2014, 2015, 2016, 2017, and 2018 taxable years. In his Petition, Mr. Ahmad does not dispute that he owes the income tax liabilities assessed to him by respondent. Instead, Mr. Ahmad alleges that he was unable to pay his income tax liabilities due to his unemployment. He also alleges generally that "some correspondence" was "given to [him] late."

Discussion

Summary adjudication is designed to expedite litigation and avoid unnecessary and expensive trials. *Fla. Peach Corp. v. Commissioner*, 90 T.C. 678, 681 (1988). Under Rule 121(b), we may grant summary judgment "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." *See Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994). In resolving a motion for summary judgment, we view the facts and draw inferences therefrom in the light most favorable to the nonmoving party. *Dahlstrom*, 85 T.C. at 821. The nonmoving party, however, may not rest on mere allegations or denials but must set forth specific facts showing that there is a genuine dispute for trial. Rule 121(d); *see Sundstrand Corp.*, 98 T.C. at 520.

The Court has jurisdiction to review the Appeals Office's determination concerning collection actions when the taxpayer timely petitions for review.⁷ §§

⁶ On July 1, 2019, the IRS Office of Appeals was renamed the IRS Independent Office of Appeals. *See Taxpayer First Act*, Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019).

⁷ In *Boechler, P.C. v. Commissioner*, 142 S. Ct. 1493 (2022), the Supreme Court of the United States held that the timeliness requirement in section 6330(d)(1) (i.e., the requirement that a petition be filed with this Court within 30 days of a determination) is not jurisdictional. Therefore, the Court also has jurisdiction to review the Appeals Office's determination concerning collection actions even when the taxpayer's petition for review of that determination is not timely, and in certain cases, a

6320(c), 6330(d)(1). Where the validity of the taxpayer's underlying liability is properly at issue, we review the underlying liability de novo. *Sego v. Commissioner*, 114 T.C. 604, 610 (2000). We review the Appeals Office's determinations respecting any nonliability issues for abuse of discretion. *Goza v. Commissioner*, 114 T.C. 176, 181–82 (2000). Because Mr. Ahmad does not dispute his underlying tax liabilities, we review the determination only for abuse of discretion. Abuse of discretion exists when a determination is arbitrary, capricious, or without sound basis in fact or law. *Murphy v. Commissioner*, 125 T.C. 301, 320 (2005), *aff'd*, 469 F.3d 27 (1st Cir. 2006).

We must determine whether SO George's decision sustaining the NFTL in lieu of a collection alternative was an abuse of discretion as a matter of law (or whether there is a genuine dispute of material fact that would preclude the entry of summary judgment). Section 6330(c)(3) (as applied to this lien action by section 6320(c)) requires that the SO (1) verify that the requirements of any applicable law or administrative procedure has been met, § 6330(c)(1), (2) consider any relevant issues raised by the taxpayer, § 6330(c)(2), and (3) balance the need for efficient collection of taxes with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary. § 6330(c)(3). *Thompson v. Commissioner*, 140 T.C. 173, 178–79 (2013). In reviewing the determination, we do not substitute our judgment for that of the SO or make an independent determination of what would be an acceptable collection alternative. *Id.* at 179. If the SO "followed all statutory and administrative guidelines and provided a reasoned, balanced decision," we "will not reweigh the equities." *Id.* It is not an abuse of discretion to sustain a collection action if the taxpayer fails to submit requested information by a reasonable deadline set by the settlement officer. *See Pough v. Commissioner*, 135 T.C. 344, 351 (2010); *see also Shanley v. Commissioner*, T.C. Memo. 2009-17, slip op. at 11.

The undisputed facts in the record establish that SO George verified that the requirements of applicable law or administrative procedure had been met.⁸ Although an unemployed taxpayer may be eligible for a collection alternative under certain circumstances, Mr. Ahmad did not respond to the two letters sent to him and did not provide any requested financial information or signed tax returns for the 2019 and 2020 taxable years. Mr. Ahmad was first asked to provide the requested financial information and signed tax returns on June 14, 2021, with a deadline of August 4, 2021, but he still had not provided any information or documents as of November 23, 2021. We have sustained collection actions when taxpayers have failed to produce

taxpayer's failure to comply with the timing requirement in section 6330(d)(1) may not constitute a complete defense or a bar to considering the merits of a taxpayer's petition. *See id.* at 1497 ("The distinction [between jurisdictional and non-jurisdictional requirements] matters. Jurisdictional requirements cannot be waived or forfeited, must be raised by courts *sua sponte*, and . . . do not allow for equitable exceptions."). In this case, respondent has waived any potential objection based on the timeliness requirement in section 6330(d)(1) (as applied to this lien action by section 6320(c)) by expressly conceding in his Motion for Summary Judgment that Mr. Ahmad met it. Therefore, the timeliness requirement in section 6330(d)(1) poses no bar to the Court's jurisdiction in this case.

⁸ In addition, Mr. Ahmad does not allege in his Petition that SO George failed to properly verify that the requirements of applicable law or administrative procedure had been met.

requested financial information on much shorter timeframes. *See Shanley*, T.C. Memo. 2009-17, slip op. at 3–5, 12–16 (sustaining collection action where settlement officer prescribed 14-day deadline to provide financial information and approximately one month passed between expiration of deadline for financial information and issuance of notice of determination). When Mr. Ahmad did not respond, the Appeals Office closed his case after SO George considered the issues Mr. Ahmad raised and performed the analysis required by section 6330(c)(3), although she reasonably concluded that a collection alternative was inappropriate since Mr. Ahmad did not submit any of the information requested to determine whether one was appropriate. The Appeals Office then issued a notice of determination sustaining the proposed lien. On this record, we conclude that the Appeals Office did not abuse its discretion by sustaining the collection action against petitioner.⁹

Because the material facts are not in dispute and respondent is entitled to a decision as a matter of law, it is hereby

ORDERED that respondent’s Motion for Summary Judgment, filed August 26, 2022, is granted. It is further

ORDERED AND DECIDED that respondent’s determination as set forth in the Notice of Determination Concerning Collection Actions under IRC Sections 6320 or 6330 of the Internal Revenue Code issued November 23, 2021, is sustained in full.

**(Signed) L. Paige Marvel
Judge**

⁹ Mr. Ahmad also alleges generally in the Petition that the collection action is improper because “some correspondence” was “given to [him] late.” Rule 121(d), however, provide that the nonmoving party may not rest on mere allegations or denials in the pleadings but must set forth specific facts showing that there is a genuine dispute for trial. Because Mr. Ahmad has not shown any specific facts showing that there is a genuine dispute for trial on this issue, and our review of the record does not disclose any, this general allegation in the Petition is not sufficient for Mr. Ahmad to avoid the entry of summary judgment against him.