

United States Tax Court

T.C. Memo. 2022-67

DINO KOTRIDES,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 17918-19L.

Filed June 28, 2022.

Dino Kotrides, pro se.

Jane J. Kim, Thomas A. Deamus, and Mimi M. Wong, for respondent.

MEMORANDUM OPINION

URDA, *Judge*: In this collection due process (CDP) case petitioner, Dino Kotrides, seeks review pursuant to sections 6320¹ and 6330 of a determination by the Internal Revenue Service (IRS) Independent Office of Appeals² upholding the filing of a notice of federal tax lien (NFTL) with respect to an unpaid federal income tax liability for his 2014 tax year. The Commissioner has moved for summary judgment, contending that there are no disputed issues of material fact

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. We round all monetary values to the nearest dollar.

² On July 1, 2019, the Office of Appeals was renamed the Independent Office of Appeals. See Taxpayer First Act, Pub. L. No. 116-25, § 1001(a), 133 Stat. 981, 983 (2019). Some events at the administrative level predate that change, while others came after it. We will use the name in effect at the time of the issuance of the notice of determination, i.e., the Independent Office of Appeals.

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[*2] and that the determination to sustain the NFTL filing was proper as a matter of law. We agree and will grant summary judgment to the Commissioner.

Background

Mr. Kotrides did not respond to the Commissioner's motion for summary judgment. The following uncontroverted facts are derived from the petition, the exhibits attached to the declaration supporting summary judgment, and the other filings in this case. *See Howell v. Commissioner*, T.C. Memo. 2014-212, at *2. Mr. Kotrides lived in New York when he timely petitioned this Court.

I. *Mr. Kotrides's 2014 Tax Liability and IRS Collection Activity*

A. *Tax Liability*

Mr. Kotrides did not file his 2014 federal income tax return. Consequently, the IRS prepared a substitute for return for him under the authority of section 6020(b). Although the IRS sent Mr. Kotrides a notice of deficiency, he did not file a petition to challenge the notice in this Court. The IRS subsequently assessed federal income tax of \$63,274, additions to tax under sections 6651 and 6654, and statutory interest.

B. *Collection Activity and CDP Hearing*

As of November 23, 2018, Mr. Kotrides's outstanding 2014 tax liability totaled \$94,138. To collect this amount the IRS filed an NFTL and sent Mr. Kotrides notice of that filing. Mr. Kotrides timely requested a CDP hearing, expressing his interest in a lien discharge. He further asserted that there was an "error" because his tax liability is "not possible with income made."

The case thereafter was assigned to a settlement officer in the Independent Office of Appeals, who scheduled a telephone CDP hearing for July 23, 2019. In her scheduling letter the settlement officer requested that Mr. Kotrides provide his 2015–18 federal income tax returns (which he had not filed), proof of any estimated tax payments, and a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals. After noting that the assessment had been based on a substitute for return prepared by the IRS, the settlement officer explained that Mr. Kotrides was required to "submit tax returns for these periods" if he "wish[ed] for the Service to

[*3] reconsider.” Mr. Kotridis provided no information in response to this letter.

The settlement officer held the telephone CDP hearing as scheduled on July 23, 2019. During the call Mr. Kotridis informed her that he had not read the second page of her scheduling letter and was unaware of her information requests. The settlement officer then reviewed with Mr. Kotridis the information she had requested and gave him two weeks to provide those materials. Mr. Kotridis neither provided any of the information sought by the settlement officer within her timeframe, nor requested more time to do so.

The Independent Office of Appeals issued a notice of determination dated August 29, 2019, sustaining the NFTL filing. In the notice the settlement officer explained that she had verified that the IRS had complied with the requirements of applicable law and administrative procedure and that Mr. Kotridis proposed no collection alternatives. Although the notice set forth Mr. Kotridis’s argument that the liability was inconsistent with his income, the settlement officer deemed the assessments to be valid. The settlement officer concluded that Mr. Kotridis had failed to demonstrate that the NFTL filing “was overly intrusive or that better alternatives [were] available” and accordingly sustained the collection action.

II. *Tax Court Proceedings*

Mr. Kotridis filed a timely petition in this Court. He asserted that he had explained to the settlement officer that he did not turn a profit during the year at issue but that he “was not able to put paperwork together in time” to support that point. He further contended that his tax liability stemmed from his misapprehension that he was not required to file a return.

This case was scheduled for a remote trial (via Zoomgov) on May 17, 2021. A few months before trial, the Commissioner filed a motion for summary judgment. Although this Court gave Mr. Kotridis the chance to respond before trial, he did not file a response within the time provided.

At the remote trial session, Mr. Kotridis had the opportunity to discuss his case with a pro bono attorney and expressed his desire to attempt to obtain representation. We took the Commissioner’s motion for summary judgment under advisement and gave Mr. Kotridis until

[*4] September 17, 2021, to inform us whether he had obtained representation.

Mr. Kotridis failed to respond. We accordingly resumed our consideration of the pending motion, directing Mr. Kotridis to file a response by November 8, 2021. Our order warned him that, “[s]hould [he] fail to file a response, the Court may grant the Commissioner’s motion and enter a decision accordingly.” He again filed no response.

Discussion

I. *General Principles*

A. *Summary Judgment*

The purpose of summary judgment is to expedite litigation and avoid costly, time-consuming, and unnecessary trials. *Fla. Peach Corp. v. Commissioner*, 90 T.C. 678, 681 (1988). Under Rule 121(b) the Court may grant summary judgment when there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. *Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff’d*, 17 F.3d 965 (7th Cir. 1994). In deciding whether to grant summary judgment, we construe factual materials and inferences drawn from them in the light most favorable to the nonmoving party. *Id.* However, the nonmoving party may not rest upon the mere allegations or denials of his pleadings but instead must set forth specific facts showing that there is a genuine dispute for trial. Rule 121(d); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

Because Mr. Kotridis did not respond to the motion for summary judgment, we could enter decision against him for that reason alone. *See* Rule 121(d). We will nevertheless consider the motion on its merits. We conclude that no material facts are in genuine dispute and that this case is appropriate for summary adjudication.

B. *Standard of Review*

We have jurisdiction to review an Independent Office of Appeals determination pursuant to sections 6320(c) and 6330(d)(1). *See Murphy v. Commissioner*, 125 T.C. 301, 308 (2005), *aff’d*, 469 F.3d 27 (1st Cir. 2006). Where the validity of the underlying tax liability is properly at issue, we review the determination regarding the underlying tax liability de novo. *Sego v. Commissioner*, 114 T.C. 604, 610 (2000); *Goza v. Commissioner*, 114 T.C. 176, 181–82 (2000). We review all other

[*5] determinations for abuse of discretion. *See Sego*, 114 T.C. at 610; *Goza*, 114 T.C. at 182. In reviewing for abuse of discretion, we must uphold the Independent Office of Appeals determination unless it is arbitrary, capricious, or without sound basis in fact or law. *See Murphy*, 125 T.C. at 320.

II. *Underlying Liability*

A taxpayer may raise a challenge to the existence or amount of his underlying tax liability during his CDP proceeding only if he did not receive a statutory notice of deficiency for the tax year at issue or otherwise have an opportunity to dispute it. *See* §§ 6320(c), 6330(c)(2)(B). Mr. Kotrides has asserted both in the Independent Office of Appeals and in this Court that the amount of his underlying liability is incorrect, ostensibly because it fails to properly reflect certain costs and expenses he incurred.

The Commissioner, however, has supplied a dated notice of deficiency (with a certified mailing number) and a matching U.S. Postal Service Form 3877, Firm Mailing Book for Accountable Mail, which indicates that the notice was mailed to the address Mr. Kotrides has used throughout these proceedings. *See Cropper v. Commissioner*, 826 F.3d 1280, 1286 (10th Cir. 2016), *aff'g* T.C. Memo. 2014-139; *Portwine v. Commissioner*, T.C. Memo. 2015-29, at *10–12, *aff'd*, 668 F. App'x 838 (10th Cir. 2016). “The mailing of a properly addressed letter creates a ‘presumption that it reached its destination and was actually received by the person to whom it was addressed.’” *BM Constr. v. Commissioner*, T.C. Memo. 2021-13, at *12 (quoting *Rivas v. Commissioner*, T.C. Memo. 2017-56, at *20); *see also Conn v. Commissioner*, T.C. Memo. 2008-186, 2008 WL 2986391, at *2 (“If the presumption is raised and the taxpayer does not rebut the presumption, the Court may find that the taxpayer received the notice of deficiency . . .”). For his part, Mr. Kotrides has not denied at any point in these proceedings that he received the notice of deficiency.

In short, the undisputed facts in the record before us establish that Mr. Kotrides received the 2014 notice of deficiency and elected not to petition this Court for redetermination. Mr. Kotrides accordingly was precluded from contesting his 2014 tax liability before the Independent Office of Appeals during his CDP hearing and is similarly precluded before us. *See* §§ 6320(c), 6330(c)(2)(B); *Goza*, 114 T.C. at 182–83.

[*6] III. *Abuse of Discretion*

In determining whether the Independent Office of Appeals abused its discretion, we consider whether the settlement officer (1) properly verified that the requirements of applicable law or administrative procedure have been met, (2) considered any relevant issues Mr. Kotrides raised, and (3) weighed “whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of [Mr. Kotrides] that any collection action be no more intrusive than necessary.” § 6330(c)(3); *see also* § 6320(c). Our review of the record establishes that the settlement officer satisfied all the requirements.

A. *Verification*

We have authority to review satisfaction of the verification requirement regardless of whether the taxpayer raised that issue at the CDP hearing. *See Hoyle v. Commissioner*, 131 T.C. 197, 200–03 (2008), *supplemented by* 136 T.C. 463 (2011). Mr. Kotrides has not at any point in this case challenged the verification requirement, and we conclude from the record that the settlement officer conducted a thorough review of Mr. Kotrides’s account transcripts and verified that all applicable requirements were met. *See* Rule 331(b)(4) (“Any issue not raised in the assignments of error shall be deemed to be conceded.”), Rule 121(d).

B. *Issues Raised*

In the Independent Office of Appeals and in this Court, Mr. Kotrides has sought to challenge his underlying liability to the exclusion of any other clearly identified issues. Viewed in a charitable light, Mr. Kotrides’s petition could be read to suggest that the settlement officer abused her discretion in failing to afford him more time to assemble the documentation in support of his liability challenge.

To the extent that Mr. Kotrides seeks to raise such an argument, we conclude that the settlement officer did not abuse her discretion in this regard. The reasonableness of an extension request, and the reasonableness of a denial of such a request, depend on the particular facts of the case. *See Dinino v. Commissioner*, T.C. Memo. 2009-284, 2009 WL 4723652, at *9; *see also Coleman v. Commissioner*, T.C. Memo. 2010-51, 2010 WL 985291, at *4, *aff’d*, 420 F. App’x 663 (8th Cir. 2011); *Shanley v. Commissioner*, T.C. Memo. 2009-17, 2009 WL 195929, at *5–6. As an initial matter, Mr. Kotrides never made an

[*7] explicit extension request, and we can hardly fault the settlement officer for not granting relief that was not sought.

Moreover, the settlement officer acted consistently with IRS guidelines as to the submission of information. *See Dinino v. Commissioner*, 2009 WL 4723652, at *9. “There is no requirement that the Commissioner wait a certain amount of time before making a determination as to a proposed [collection procedure].” *Gazi v. Commissioner*, T.C. Memo. 2007-342, 2007 WL 4119009, at *9. “Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.” Treas. Reg. § 301.6330-1(e)(3), Q&A-E9; *see* Treas. Reg. § 301.6320-1(e)(3), Q&A-E9.

Mr. Kotridis had more than two months—from June 21 until August 29, 2019—to provide any supporting information that he wished the settlement officer to consider. The settlement officer gave Mr. Kotridis four weeks to provide this material before the CDP hearing, followed by two more weeks after Mr. Kotridis revealed that he had failed to read the page of the scheduling letter that requested his supporting information. Even after the deadline for his second chance expired, two more weeks passed before the issuance of the notice of determination, during which time Mr. Kotridis could have submitted supporting information pursuant to the established policies of the Independent Office of Appeals. *See Dinino v. Commissioner*, 2009 WL 4723652, at *10; *see also* Internal Revenue Manual 8.22.9.10 (Nov. 13, 2013).

At no time during this two-month period did Mr. Kotridis either provide additional information or request more time. Under these circumstances, we see no abuse of discretion by the settlement officer in not giving Mr. Kotridis additional time.

C. *Balancing Analysis*

Mr. Kotridis did not allege in his petition or argue at any later point that the settlement officer failed to consider “whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.” *See* § 6330(c)(3)(C); *see also* § 6320(c). He thus has conceded this issue. *See* Rules 121(d), 331(b)(4). In any event the settlement officer expressly concluded in the supplemental notice of determination that the NFTL filing balanced the

[*8] need for efficient tax collection with Mr. Kotrides's legitimate concerns about intrusiveness since a collection alternative could not be reached. We find in the record no basis for disturbing the settlement officer's conclusion regarding this requirement.

IV. *Conclusion*

Finding no abuse of discretion, we will grant summary judgment for the Commissioner and affirm the IRS's determination to sustain the NFTL filing.

To reflect the foregoing,

An appropriate order and decision will be entered.