

UNITED STATES TAX COURT

[REDACTED])
)
 Petitioner,)
)
 v.) Docket No. [REDACTED]
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

RESPONDENT'S MOTION FOR REMAND

RESPONDENT MOVES that this Court remand this case to respondent's Appeals Office in order for the settlement officer to hold a face-to-face hearing and to address all of the issues raised by petitioner during her collection due process proceeding.

IN SUPPORT THEREOF, respondent respectfully states:

1. On [REDACTED] 2006, respondent issued a Letter 1058, Final Notice of Intent to Levy and Notice of Your Right to a Hearing ("Notice of Levy"), to petitioner for her 2003 income tax liabilities.

2. On [REDACTED] 2006, respondent's Appeals Office received the Petitioner's timely filed Form 12153, Request for a Collection Due Process Hearing with respect to the Notice of Levy for petitioner's 2003 income tax liabilities (the "CDP Request").

Petitioner requested a face-to-face hearing and renounced any past issues she has raised that the IRS may have considered to be frivolous.

3. On [REDACTED] 2007, the settlement officer sent petitioner a letter in response to the petitioner's CDP Request.

The letter stated that the petitioner could not dispute the underlying income tax liability for 2003 because the petitioner had a prior opportunity to dispute the tax on account of a notice of deficiency that was sent to the petitioner prior to assessment. The letter also stated that the issues raised in the petitioner's CDP Request are considered to be frivolous or that Appeals does not consider, and that the petitioner would therefore not be entitled to a face-to-face hearing. The letter set a telephone hearing for [REDACTED] 2007, and specified the financial information that would be needed from petitioner (un-filed income tax returns for 2004 and 2005 and Collection Information Statements 433-A and 433-B) in order for the settlement officer to consider collection alternatives.

4. On [REDACTED] 2007, the settlement officer sent the petitioner a letter stating that the petitioner had failed to call for her telephonic hearing or send in the requested information that would be required in order to consider a collection alternative. The letter requested that the petitioner send in any additional information that she wished to be considered within fourteen days.

5. On [REDACTED] 2007, the petitioner sent a letter to the settlement officer, in which she renewed her request for a

face-to-face hearing with respect to her CDP Request. Petitioner also stated that she had no recollection of ever receiving a notice of deficiency, and that she wished to dispute her underlying income tax liability and to possibly discuss any available collection alternatives.

6. On [REDACTED] 2007, the settlement officer sent petitioner a letter stating that the petitioner failed to participate in the telephonic conference set for [REDACTED] 2007 and that the petitioner was given a reasonable amount of time to submit a specific reason as to why she disagreed with the Notice of Levy. The letter also stated that the issues raised by the petitioner (in her [REDACTED] 2007 letter) were frivolous, that the petitioner failed to send in the previously requested financial information, and that the petitioner had fourteen days to send in any additional information that she would like considered.

7. On [REDACTED] 2007, a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 ("Notice of Determination") was sent to petitioner, sustaining the Notice of Levy. A complete copy of the Notice of Determination (with the taxpayer identification numbers redacted in compliance with Tax Court Rule 27) is attached as Exhibit A. The Notice of Determination states, inter alia, that petitioner did not qualify for any collection alternative because she failed to provide any

of the requested financial information; it further states that the petitioner's challenge to the underlying income tax liability could not be considered, despite petitioner's claim that she had no recollection of having ever received a notice of deficiency. It also states that petitioner failed to participate in the telephonic conference that was offered.

9. Although petitioner raises some allegations regarding respondent's assessment and collection procedures and did not provide any of the financial information requested by the settlement officer, she did raise a plausible claim with respect to her underlying tax liability. Additionally, petitioner requested a face-to-face hearing with the settlement officer.

10. Based on the foregoing, respondent requests that this case be remanded in order for the settlement officer to hold a face-to-face hearing in which to address all non-frivolous matters raised by petitioner, including her underlying income tax liability, and then issue a supplemental Notice of Determination.

11. Petitioner could not be reached regarding whether or not she objects to this motion.

WHEREFORE, respondent requests that this motion be granted.

[REDACTED]
Chief Counsel
Internal Revenue Service

Date: [REDACTED] 2008

By: [REDACTED]
[REDACTED]
General Attorney
(Small Business/Self-Employed)
Tax Court Bar [REDACTED]
[REDACTED]
[REDACTED]
Telephone: [REDACTED]

OF COUNSEL:

[REDACTED]
Division Counsel
(Small Business/Self-Employed)

[REDACTED]
Area Counsel (Small Business/Self-Employed) [REDACTED]

[REDACTED]
Associate Area Counsel
(Small Business/Self-Employed:Area [REDACTED])