United States Tax Court

T.C. Memo. 2022-66

ALEJANDRO SERNA,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 13202-19L. Filed June 27, 2022.

Eugene Thomas Ryder, for petitioner.

Stanislaw Balazia, for respondent.

MEMORANDUM OPINION

URDA, *Judge*: In this collection due process (CDP) case petitioner Alejandro Serna seeks review pursuant to sections 6320[1] and 6330 of a determination by the Internal Revenue Service (IRS) Office of Appeals[2] upholding the filing of a notice of federal tax lien (NFTL) with respect to an unpaid federal income tax liability for his 2016 tax year. The crux of the dispute before us is whether the Office of Appeals abused its discretion in rejecting Mr. Serna's offer-in-compromise (OIC) of $10,000, which was premised upon the particular hardship that the lien

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[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). As the events in this case predate that change, we use the name in effect at the times relevant to this case, i.e., the Office of Appeals.

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[*2] would work on Mr. Serna's children. The Commissioner has moved for summary judgment. Bearing in mind the Office of Appeals' decision to put Mr. Serna's account in currently-not-collectible status, we conclude that it did not abuse its discretion either in rejecting the OIC or in sustaining the NFTL filing. We thus will grant summary judgment to the Commissioner.

Background

The following facts are based on the parties' pleadings and motion papers, including the attached declarations and exhibits. *See* Rule 121(b). Mr. Serna lived in Illinois when he timely filed his petition.

I. *Mr. Serna's 2016 Early Retirement Distribution*

Mr. Serna is a warehouse worker who earned $38,990 in wages in 2016, the year at issue. He also received during that year a retirement distribution of $322,970. Mr. Serna used a portion of the funds at his disposal after this distribution to buy a home for his estranged wife[3] and four children in a new school district.

The IRS received Mr. Serna's 2016 federal income tax return on May 11, 2017. On his return Mr. Serna reported taxable income of $355,012 and a tax liability of $132,980. Mr. Serna's 2016 federal tax withholdings amounted to $68,139, leaving a shortfall of $64,841. The IRS thereafter assessed the tax reported on Mr. Serna's 2016 return, as well as interest and penalties for the late filing of his return and his failure to pay.

II. *Collection Activities and CDP Proceeding*

A. *Mr. Serna's OIC*

In June 2017 the IRS sent Mr. Serna a notice and demand for payment. In response Mr. Serna submitted an OIC, proposing to settle the liability for $10,000 based on "doubt as to collectibility."[4] Mr. Serna explained that he received the contents of his retirement account after being "let go" from his job and that his purchase of the home relieved

[3] The record before us is unclear as to whether Mr. Serna is divorced or separated from his wife. As the parties do not dispute that the couple is separated at least, we will refer to her as Mr. Serna's estranged wife.

[4] Mr. Serna included with his OIC the proposed settlement amount of $10,000, which the IRS applied to his 2016 liability.

[*3] him from paying child support. Mr. Serna further stated that he himself lived with his parents and paid them rent.

Mr. Serna's OIC thereafter was assigned to an appeals officer who analyzed his assets, income, and liabilities. The IRS ultimately rejected the OIC on the grounds that (1) his tax liabilities were less than his reasonable collection potential[5] and (2) the special circumstances Mr. Serna had noted did not warrant acceptance. In particular, the appeals officer concluded that Mr. Serna could fully pay his liability ($69,806) based on the equity in the house ($152,367), despite his monthly expenses exceeding his income.

Mr. Serna filed a timely appeal of the OIC rejection. In a change of tack he argued that the OIC qualified for acceptance based on "effective tax administration." Specifically, he explained that two of his four children suffered from significant developmental disabilities and that the house was essential to them for multiple reasons. Mr. Serna further asserted that he was an unsophisticated taxpayer caught unawares by the 10% penalty and the change in his tax rate that accompanied the early distribution from his retirement plan.

B. *CDP Request and Hearing*

During the pendency of the appeal, the IRS issued to Mr. Serna a notice of NFTL filing with respect to his 2016 tax liability. Mr. Serna requested a CDP hearing on the ground that one of his sons suffered from medical problems and that uprooting his son "would be tragic." Mr. Serna's CDP case was subsequently consolidated with the appeal of his OIC rejection.

After a settlement officer was assigned to the case, Mr. Serna sent her a letter asserting that the effective-tax-administration framework set forth in part 4.18.3 of the IRM supported acceptance of his OIC. Mr. Serna emphasized (1) the detrimental effect on his children if he were forced to sell the house, (2) his history of compliance with tax payments,

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[5] The calculation of a taxpayer's reasonable collection potential is central to the evaluation of an OIC. *Churchill v. Commissioner*, T.C. Memo. 2011-182, 2011 WL 3300235, at *3; *see* Internal Revenue Manual (IRM) 5.8.5.1 (Sept. 23, 2008). A settlement officer generally derives the reasonable collection potential from her estimate of the value of a taxpayer's assets and likely future income. *See* IRM 5.8.4.3.1 (Apr. 30, 2015). Likely future income, in turn, is determined by multiplying the taxpayer's monthly disposable income (gross income minus necessary living expenses) by a certain number of months. *See id.* 8.23.3.3.2.2 (Nov. 21, 2013).

[*4] and (3) his misunderstanding—given the unusually high amount of income he received in 2016—that the withholding related to the early retirement distribution would suffice to cover the tax due. Mr. Serna also pointed out that he was struggling to cover the real estate taxes for the house.

Mr. Serna supported his contentions with medical and school records for two of his children, pay stubs and bank statements, and house-related documents. Among other things, Mr. Serna included a warranty deed for the home purchase, which was dated March 14, 2017, and displayed a recording date of April 11, 2017.

The case subsequently was transferred to a second settlement officer, who reviewed the documentation previously submitted, stating in her case activity notes that "we have a situation where [Mr. Serna's] disabled child could be severely impacted by another move." She also delved into Mr. Serna's underlying tax situation, noting that his tax issue appeared to be a "one-time isolated tax liability."

The second settlement officer held a telephone CDP hearing with Mr. Serna's representative on March 19, 2019. During the hearing, the settlement officer explained that the effective-tax-administration analysis required an examination of Mr. Serna's income and expenses, noting that her preliminary review suggested that Mr. Serna's disposable income had increased during 2018. The settlement officer gave Mr. Serna two weeks to file his 2018 tax return and to produce information that could support additional expenses relating to his children.

Over the next few weeks, the settlement officer and Mr. Serna's representative went back-and-forth both by fax and telephone. After Mr. Serna submitted his 2018 return, which claimed only one of his sons as a dependent, the settlement officer questioned whether this position was consistent with Mr. Serna's earlier representations that he did not pay child support and lived separately from his children.

In response, Mr. Serna explained that IRS Publication 501, Dependents, Standard Deduction, and Filing Information, takes into account the provision of lodging for purposes of determining child support and asserted that he had not taken inconsistent positions. Mr. Serna further stressed that the allowable expenses associated with his dependent son would almost completely offset the modest increase in his income previously cited by the settlement officer. Mr. Serna also sent a

[*5] later fax with updated monthly expenses, although he failed to provide any supporting documentation.[6]

C. *Rejection of OIC Appeal and Notice of Determination*

On September 12, 2019, the settlement officer issued to Mr. Serna both a rejection memorandum relating to his appeal and a notice of determination sustaining the NFTL filing. In the rejection memorandum the settlement officer explained that she allowed the additional expenses associated with the dependent son Mr. Serna claimed on his 2018 tax return, which resulted in placing Mr. Serna's account in currently-not-collectible status. The settlement officer decided, however, that rejection was appropriate because he had sufficient equity ($152,000) to fully pay his liability.

In rejecting the OIC the settlement officer expressed skepticism about Mr. Serna's conduct vis-à-vis the home purchase. In particular she noted that Mr. Serna had offered no documents to show that he was under any obligation to buy a home for his estranged wife and children. She further suggested that Mr. Serna had timed the home purchase to precede the filing of his 2016 tax return, which would have shown a balance due. The settlement officer explained that this conduct was out of the ordinary, as he had filed early for every prior tax year and employed the same tax return preparer as before.

In the notice of determination the settlement officer stated that no information warranted the withdrawal of the NTFL filing but that the case nonetheless would be returned "for no further action." The settlement officer again explained that the OIC had been rejected, detailing that Mr. Serna did not qualify for relief under collectibility grounds because of his equity in the house.

The settlement officer also concluded that Mr. Serna did not satisfy the standard for acceptance based upon effective tax administration based on his purportedly contradictory statements about his living arrangements and child support. She nonetheless explained that she had "conceded" that Mr. Serna was entitled to additional

[6] The expenses included "[l]egal expenses" ($200 per month), homeowner association fees for the house at which his children resided ($50), the cost of a weekly class taken by Mr. Serna ($120), transportation costs ($200), rent and utility bills for living with his parents ($500), groceries (approximately $250), "[c]lothing for [Mr. Serna] and things that [his] kids might need" ($150), and payments to the mother of his children because she had lost her job in January 2019 ($300).

[*6] expenses relating to his son based on his 2018 tax return, "which qualified [him] for currently not collectible status." The settlement officer accordingly notified Mr. Serna that the IRS would not be taking any further collection action against him unless his financial circumstances improved.

Discussion

I. *Governing 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 made 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.* The nonmoving party, however, 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).

B. *Standard of Review*

We have jurisdiction to review the Office of Appeals' determination pursuant to sections 6320(c) and 6330(d)(1). Where, as here, the underlying tax liability is not at issue, we review the settlement officer's decision for abuse of discretion. *Sego v. Commissioner*, 114 T.C. 604, 610 (2000); *Goza v. Commissioner*, 114 T.C. 176, 182 (2000). In reviewing for abuse of discretion, we must uphold the settlement officer's determination unless it is arbitrary, capricious, or without sound basis in fact or law. *See Murphy v. Commissioner*, 125 T.C. 301, 320 (2005), *aff'd*, 469 F.3d 27 (1st Cir. 2006); *Taylor v. Commissioner*, T.C. Memo. 2009-27, 2009 WL 275721, at *9.

II. *Abuse of Discretion Analysis*

Mr. Serna asserts that the Office of Appeals abused its discretion in sustaining the NFTL filing and rejecting his OIC. We review the record to determine whether the settlement officer (1) properly verified

[*7] that the requirements of applicable law or administrative procedure have been met; (2) considered any relevant issues Mr. Serna raised; and (3) considered "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of [Mr. Serna] that any collection action be no more intrusive than necessary." *See* § 6330(c)(3); *see also* § 6320(c). We conclude that the settlement officer satisfied all of these requirements.

A. *Verification*

We have authority to review a settlement officer's satisfaction of the verification requirement regardless of whether the taxpayer raised the issue at the CDP hearing. *Kidz Univ., Inc. v. Commissioner*, T.C. Memo. 2021-101, at *10 (citing *Hoyle v. Commissioner*, 131 T.C. 197, 200–03 (2008), *supplemented by* 136 T.C. 463 (2011)); *Triola v. Commissioner*, T.C. Memo. 2014-166, at *9. Mr. Serna did not allege in his petition that the settlement officer failed to satisfy this requirement and has set forth no specific facts to that effect. *See* Rule 331(b)(4) ("Any issue not raised in the assignments of error shall be deemed to be conceded."); *Rockafellor v. Commissioner*, T.C. Memo. 2019-160, at *12. In any event the undisputed record demonstrates that the settlement officer thoroughly reviewed Mr. Serna's information and account transcripts and verified that all applicable requirements were met.

B. *Issues Raised*

1. *Legal Background*

Throughout the proceedings in the Office of Appeals and in this Court, Mr. Serna has raised only one issue: that circumstances pertaining to the well-being of his children justified the acceptance of his OIC of $10,000. Section 7122(a) authorizes the Secretary to compromise an outstanding tax liability on grounds that include the promotion of effective tax administration, the ground that Mr. Serna pressed in the Office of Appeals. *See* Treas. Reg. § 301.7122-1(b)(3), (c)(3).

The decision to accept or reject an OIC, along with the terms of the compromise, is within the Secretary's discretion. *See* § 7122(a). In reviewing the settlement officer's determination, we do not make an independent evaluation of what would be an acceptable collection alternative. *See Thompson v. Commissioner*, 140 T.C. 173, 179 (2013); *Murphy*, 125 T.C. at 320; *see also Randall v. Commissioner*, T.C. Memo. 2018-123, at *9. "If the settlement officer followed all statutory

[*8] and administrative guidelines and provided a reasoned, balanced decision, the Court will not reweigh the equities." *Thompson*, 140 T.C. at 179; *see also Lipson v. Commissioner*, T.C. Memo. 2012-252, at *9.

"[W]e judge the propriety of the [Office of Appeals'] determination . . . on the grounds invoked by the Office of Appeals." *Elkins v. Commissioner*, T.C. Memo. 2020-110, at *24; *see also SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947); *Antioco v. Commissioner*, T.C. Memo. 2013-35, at *25 ("Applying *Chenery* in the CDP context means that we can't uphold a notice of determination on grounds other than those actually relied upon by the Appeals officer."). In doing so, we look to the reasons offered in the notice of determination, as further unspooled in the settlement officer's contemporaneous rejection memorandum and case activity notes. *Accord Melasky v. Commissioner*, 151 T.C. 93, 106 (2018) ("[W]e will uphold a notice of determination of less than ideal clarity if the basis for the determination may reasonably be discerned . . . ."), *aff'd*, 803 F. App'x 732 (5th Cir. 2020); *Kasper v. Commissioner*, 150 T.C. 8, 24–25 (2018) ("Although we may not accept any *post hoc* rationalizations for agency action provided by the Commissioner's counsel, we may consider any 'contemporaneous explanation of the agency decision' contained in the record." (quoting *Tourus Records, Inc. v. Drug Enf't Admin.*, 259 F.3d 731, 738 (D.C. Cir. 2001))); *see Elkins*, T.C. Memo. 2020-110, at *25–29.

2. *Treatment of Mr. Serna's OIC*

A settlement to promote effective tax administration is justified (i) when it is determined that full collection could be achieved but would "cause the taxpayer economic hardship within the meaning of [Treas. Reg.] § 301.6343-1," or (ii) when exceptional circumstances exist such that collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner. Treas. Reg. § 301.7122-1(b)(3)(i), (ii); *see also Bogart v. Commissioner*, T.C. Memo. 2014-46, at *10. In the notice of determination, the settlement officer considered the OIC "under Effective Tax Administration (ETA) with special circumstances because the collection of the full liability will create economic hardship as well as

[*9] developmental concerns for [Mr. Serna's] dependent and developmentally challenged children."[7]

a. *Economic Hardship*

"An offer to compromise based on economic hardship generally will be considered acceptable when, even though the tax could be collected in full, the amount offered reflects the amount the Service can collect without causing the taxpayer economic hardship." Rev. Proc. 2003-71, § 4.02(3)(a), 2003-2 C.B. 517, 517; *see Dailey v. Commissioner*, T.C. Memo. 2008-148, 2008 WL 2345923, at *12–14. Treasury Regulation section 301.6343-1(b)(4) defines economic hardship as the inability to pay reasonable basic living expenses. *See also Gustashaw v. Commissioner*, T.C. Memo. 2018-215, at *15–16. When making this assessment, a settlement officer may take into account, inter alia, the taxpayer's use of monthly income to support dependents who have no other means, the taxpayer's ability to borrow against the equity of assets, and the taxpayer's ability to meet basic living expenses were assets liquidated to pay outstanding tax liabilities. *See* Treas. Reg. § 301.7122-1(c)(3).

We see no abuse of discretion in the settlement officer's conclusion that Mr. Serna's $10,000 OIC did not reflect the full amount that the IRS could collect without causing economic hardship. Mr. Serna had $152,000 in equity in the house. The record before us shows that Mr. Serna's monthly income sufficed to cover the allowable expenses for himself and the sole dependent he claimed. The IRS thus could fully satisfy the liability with the equity in the house without visiting economic hardship on Mr. Serna.

In his opposition to summary judgment Mr. Serna points to three examples that "illustrate the types of cases that may be compromised by the Secretary, at the Secretary's discretion, under the economic hardship provisions of paragraph (b)(3)(i) of this section." *Id.*

[7] In his petition Mr. Serna asserted that the settlement officer abused her discretion by confusing the standards governing acceptance of an OIC on the grounds of doubt as to collectibility and effective tax administration. Mr. Serna does not repeat this argument in opposition to summary judgment, and it is accordingly waived. *See* Rule 121(d); *McAvey v. Commissioner*, T.C. Memo. 2018-142, at *19; *Bishay v. Commissioner*, T.C. Memo. 2015-105, at *6 n.5, *aff'd in unpublished opinion*, 2017 WL 11453028 (1st Cir. Oct. 11, 2017).

[*10] subdiv. (iii).[8] We are unpersuaded that any of these examples where a settlement officer *might* exercise discretion to compromise a liability compelled the settlement officer to do so here.

Each of the examples presents a variation on the general scenario where the liquidation of an asset to satisfy a tax liability compromises the taxpayer's ability to pay basic living expenses or meet his or a dependent's medical needs. *See id.* The notice of determination and the rejection memorandum (as well as the settlement officer's contemporaneous case activity notes) show that the settlement officer weighed these precise concerns. We see nothing in the record to disturb her conclusion that the IRS could collect more than the $10,000 OIC without imposing economic hardship.

We are not blind to the fact that Mr. Serna repeatedly asserted that he was supporting not one, but four children (and his estranged wife) in the house at issue. He claimed only one of these children as a dependent on his tax return, however, and we cannot fault the settlement officer for considering only that child in her evaluation.

Nor are we persuaded by Mr. Serna's contention that the settlement officer's refusal to accept the OIC put at risk his children's access to their current school district. Despite being given multiple opportunities, Mr. Serna failed to provide the settlement officer with sufficient information to credit this assertion and factor it into her evaluation.

In conclusion, we might have reached a different result than the settlement officer had we evaluated the OIC in the first instance. We nonetheless cannot say that the settlement officer abused her discretion in deciding as she did. *Cf. Gustashaw*, T.C. Memo. 2018-215, at *17 ("Even if we accept [the taxpayers'] argument that they would suffer economic hardship, we would not find that the settlement officer abused his discretion."); Thompson, 140 T.C. at 179.

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[8] Mr. Serna additionally emphasizes his prior tax compliance in arguing the settlement officer abused her discretion. While we have no reason to doubt his history of compliance, lack of tax compliance is a bar to acceptance of an offer on effective-tax-administration grounds; compliance, conversely, does not alone justify acceptance. *See* Treas. Reg. § 301.7122-1(b)(3)(ii)–(iii), (c).

[*11] b. *Public Policy or Equity Considerations*

A compromise based on public policy or equity considerations will be justified only where, because of exceptional circumstances, collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner. Treas. Reg. § 301.7122-1(b)(3)(ii). A taxpayer proposing a compromise on this basis must demonstrate circumstances that justify a compromise even though a similarly situated taxpayer may have paid his liability in full. *Id.*; *see Garber v. Commissioner*, T.C. Memo. 2015-14, at *14–15.

The relevant regulations do not set forth a specific standard for evaluating an OIC on these grounds, instead providing two illustrative examples. *See* Treas. Reg. § 301.7122-1(c)(3)(iv); *Hansen v. Commissioner*, T.C. Memo. 2007-56, 2007 WL 701580, at *6, *aff'd in part sub nom*. *Keller v. Commissioner*, 568 F.3d 710 (9th Cir. 2009). The Commissioner thus must weigh a taxpayer's facts and circumstances, and he has broad discretion in deciding whether to accept such an offer. *Mason v. Commissioner*, T.C. Memo. 2021-64, at *17–18 (first citing Treas. Reg. § 301.7122-1(b)(3)(ii), then citing *Bogart*, T.C. Memo. 2014-46, at *10).

As was the case in the economic hardship context, Mr. Serna attempts to compare his case to examples provided in the regulations of the types of cases that may justify acceptance of a public policy or equity compromise. *See* Treas. Reg. § 301.7122-1(c)(3)(iv). They include (1) a taxpayer who develops a serious illness requiring extended hospitalization that causes him to be unable to manage his financial affairs, including filing tax returns, leading to significant tax liability, and (2) a taxpayer who learns after an audit that the IRS gave him incorrect advice on which he relied and is now facing additional taxes and penalties because of that reliance. *Id.*; *Gillette v. Commissioner*, T.C. Memo. 2018-195, at *21–22, *aff'd*, 801 F. App'x 398 (7th Cir. 2020). We see nothing analogous to this case. Nor do we perceive any other public policy or equity grounds that would convince us the settlement officer abused her discretion in rejecting the OIC.

C. *Balancing*

Mr. Serna does not explicitly argue 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

[*12] necessary." § 6330(c)(3)(C); *see also* § 6320(c). He has, however, repeatedly suggested that the settlement officer turned a blind eye to his actual circumstances in sustaining the NFTL filing, acting in a manner that was both heavy-handed and unnecessary.

We disagree that the settlement officer abused her discretion. As an initial matter, Mr. Serna insinuates over and again that the collection action at issue, i.e., the NFTL filing, will necessarily result in an immediate sale of the house. An NFTL filing, however, principally protects the IRS's interest in a property against other creditors. *See Balsamo v. Commissioner*, T.C. Memo. 2012-109, 2012 WL 1231985, at *3. Had the IRS sought to collect the tax liability by levy against the house, Mr. Serna would have had an opportunity to request a CDP hearing to challenge such action as improper. *See* § 6330(a), (b).

No levy action can be taken, however, because the settlement officer placed Mr. Serna's account in currently-not-collectible status. "CNC status, which suspends IRS collection efforts, 'is a "collection alternative" that the taxpayer may propose and that the Office of Appeals must take into consideration."' *Riggs v. Commissioner*, T.C. Memo. 2015-98, at *11 (quoting *Wright v. Commissioner*, T.C. Memo. 2012-24, 2012 WL 204181, at *3); *see also Norberg v. Commissioner*, T.C. Memo. 2022-30, at *5. "Such status may be available where, based on the taxpayer's assets, equity, income, and expenses, the taxpayer has no apparent ability to make payment on the outstanding tax liability." *Foley v. Commissioner*, T.C. Memo. 2007-242, 2007 WL 2403732, at *2; *see also Norberg*, T.C. Memo. 2022-30, at *5. Currently-not-collectible status does not impinge on the Commissioner's entitlement "to take steps to protect IRS interests, such as by filing an NFTL." *Reynolds v. Commissioner*, T.C. Memo. 2021-10, at *34; *see Kyereme v. Commissioner*, T.C. Memo. 2012-174, 2012 WL 2344680, at *6–7.

The settlement officer here, acting of her own volition, put Mr. Serna's account in currently-not-collectible status, effectively ending further collection efforts unless his income increases substantially. Her decision to do so was not required in light of Mr. Serna's equity in the house. *See Am. Limousines, Inc. v. Commissioner*, T.C. Memo. 2021-36, at *15 ("[A] settlement officer's denial of currently not collectible status is not an abuse of discretion where the taxpayer lacks sufficient income to pay its tax debts but owns assets that could be liquidated to provide funds to satisfy that debt."). We see her action in sustaining the NFTL filing, while placing the account in currently-not-collectible status, as striking a sensible balance between the IRS's need to efficiently collect

[*13] the liability and Mr. Serna's concern that any collection action be no more intrusive than necessary. *Cf. Garber*, T.C. Memo. 2015-14, at *15 (recognizing the Court's decision to uphold a proposed levy was of little practical value where the IRS had already placed the taxpayer's account in currently-not-collectible status); *Bennett v. Commissioner*, T.C. Memo. 2008-251, 2008 WL 4820794.

III. *Conclusion*

Our review of the undisputed material facts reflects that the settlement officer did not abuse her discretion in any respect. As such, we will grant summary judgment in favor of the Commissioner and sustain the notice of determination upholding the NFTL filing for Mr. Serna's 2016 tax year.

To reflect the foregoing,

An appropriate order and decision will be entered.