

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

ALABAMA BIODIESEL CORPORATION)
INC.,)
)
Petitioner,)
)
v.) Docket No. 22426-13 L
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER

In a notice dated August 30, 2013 (notice), respondent determined that a proposed levy “is no longer appropriate” with respect to the collection of petitioner’s excise tax liability for the period ended June 30, 2006 (underlying liability), because the underlying liability “will be reported as Currently Not Collectable”. This section 6330(d)¹ case, commenced in response to the notice, is now before the Court on respondent’s motion to dismiss on grounds of mootness, filed September 18, 2014, and supplemented on October 9, 2014.

In general, in a section 6330 proceeding a taxpayer may challenge the existence or the amount of an excise tax if the taxpayer “did not otherwise have an opportunity to dispute such tax liability”. Sec. 6330(c)(2)(B). According to the notice, the “underlying liability could not be considered in the CDP proceeding as the record shows * * * [that petitioner] had a prior opportunity to deal with Appeals on that issue in August 2007”. According to the petition, petitioner “is not liable for the excise taxes at issue”, and contrary to the representations made in the notice, it did not have a prior opportunity to dispute that liability. Respondent’s motion, as supplemented, proceeds as though petitioner is not entitled to challenge the existence or the amount of the underlying liability in this case, a point obviously in dispute.

¹ Section references are to the Internal Revenue Code of 1986, as amended.

Because the dispute between the parties with respect to petitioner's entitlement to challenge the existence or the amount of the underlying liability in this proceeding is not appropriately resolved from what has been submitted thus far, it is

ORDERED that respondent's motion, as supplemented, is denied.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
November 18, 2014