

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DARDANELLE COMMUNITY HOSPITAL,)
LLC,) **MN**
)
Petitioner,)
)
v.) Docket No. 303-14 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)
)
)
)
)
)

ORDER

Pending before the Court is respondent’s Motion For Summary Judgment, filed October 9, 2014. Respondent contends that no genuine dispute exists as to any material fact and that the determinations of his Appeals Office sustaining both a proposed levy and the filing of a Federal tax lien should be upheld. Petitioner filed an Opposition to respondent’s motion on October 30, 2014, objecting to the granting of the motion.

Respondent, as the moving party, bears the burden of proving that no genuine dispute exists as to any material fact and that respondent is entitled to judgment as a matter of law. See FPL Group, Inc. & Subs. v. Commissioner, 115 T.C. 554 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. 527, 529 (1985); see also Rule 121, Tax Court Rules of Practice and Procedure. In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party. See FPL Group, Inc. & Subs. v. Commissioner, 115 T.C. 554 (2000).

The record in this case is sparse. In addition, the record lacks both a declaration by the settlement officer who conducted the hearing and certified transcripts of petitioner’s accounts.¹ Drawing factual inferences against respondent as the moving party, we conclude that there are

¹ Remarkably, although respondent did not offer certified (or indeed, any) transcript of account in support of his motion, petitioner attached as exhibits to its Opposition transcripts for two of the three taxable periods at issue in this case; notably, however, those transcripts were non-certified and temporally stale and therefore of little, if any, value. But even if we were to overlook respondent’s failure to offer certified transcripts of recent vintage, the fact remains that the record does not include any transcript for the most recent taxable period at issue.

material issues of fact in dispute, particularly regarding whether petitioner has any outstanding liability and whether respondent's settlement officer, in sustaining the collection actions, verified that requirements of applicable law or administrative procedure have been met.² Accordingly, summary adjudication is not appropriate.

Premises considered, it is

ORDERED that respondent's Motion For Summary Judgment, filed October 9, 2014, is denied.

**(Signed) Robert N. Armen, Jr.
Special Trial Judge**

Dated: Washington, D.C.
November 19, 2014

² In his motion, respondent invokes the bar of I.R.C. section 6330(c)(2)(B). In contrast, the settlement officer did not. Rather, the settlement officer "reviewed the documents submitted by the rep and the administrative record" and "[b]ased on the evidence submitted by the taxpayer and the Service's administrative record" concluded that "[t]he taxpayer failed to meet the reasonable cause criteria." In so concluding, the settlement officer utilized a "four part multi-factor test to determine reasonable cause for non-compliance." In applying the test the settlement officer asserted that the taxpayer "has a long history with non-compliance dating back to 2010", that the taxpayer "is not a first time depositor", and that "[d]uring the time of the non-compliance the taxpayer paid all other creditors including pay checks to the LLC members." These are all factual matters, but there is no predicate to support them in the record before us; and the ultimate issue of reasonable cause is, of course, a quintessentially factual matter, which is ordinarily not suitable for adjudication by summary disposition.