

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

LITTLE HERITAGE ENRICHMENT CENTER, )  
INC., )

Petitioner(s), )

v. )

Docket No. 18355-14SL.

COMMISSIONER OF INTERNAL REVENUE, )

Respondent )

**ORDER**

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the trial in the above case before Judge Joseph Robert Goeke at Memphis, Tennessee, on April 14, 2015, containing his oral findings of fact and opinion rendered at the trial session at which this case was heard.

In accordance with the oral findings of fact and opinion, an order and decision will be entered for respondent.

**(Signed) Joseph Robert Goeke  
Judge**

Dated: Washington, D.C.  
April 23, 2015

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1 Bench Opinion by Judge Joseph Robert Goeke  
2 April 14, 2015  
3 Little Heritage Enrichment  
4 Center, Inc.  
5 Docket No. 18355-14SL

6 The Court has decided to render Oral  
7 Findings of Fact and Opinion in this case, and the  
8 following represents the Court's Oral Findings of  
9 Fact and Opinion. The Oral Findings of Fact and  
10 Opinion shall not be relied upon as precedent in any  
11 other case.

12 This opinion is rendered pursuant to the  
13 authority provided in Tax Court Rules of Practice and  
14 Procedure 152 and Internal Revenue Code Section  
15 7459(b). Hereinafter rule references are to the Tax  
16 Court Rules of Practice and Procedure and section  
17 references are to the Internal Revenue Code.

18 The burden of proof in the present matter  
19 is on the Petitioner pursuant to Rule 142(a);  
20 however, the burden of proof plays no role in our  
21 analysis, which is based upon undisputed factual  
22 information.

23 The Court's jurisdiction over the present  
24 matter is pursuant to Internal Revenue Code Sections  
25 6320(c) and 6330(d).

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1           At the time the petition was filed in this  
2 case the Petitioner's principal place of business was  
3 in Tennessee. The present case arises from  
4 Respondent's collection action via lien of employment  
5 tax liabilities of the Petitioner. More  
6 specifically, the present case is framed by  
7 Respondent's motion under Rule 121 for summary  
8 adjudication, which was set for hearing on April 13<sup>th</sup>,  
9 2015 in Memphis, Tennessee, at which hearing  
10 Petitioner was represented and Respondent's counsel  
11 also appeared.

12           As stated previously, the facts are  
13 undisputed. Respondent asserts in the motion for  
14 summary judgment that during the pendency of the  
15 collection due process hearing offered to the  
16 Petitioner pursuant to Respondent's notices of  
17 federal tax lien, Petitioner failed to submit an  
18 offer in compromise, to request an installment  
19 agreement, or any of the requested financial  
20 information, in that there was no recourse for the  
21 settlement officer other than to sustain the proposed  
22 collection ~~again~~ <sup>action</sup>, via lien filings, which had been JRG  
23 made prior to the collection hearing.

24           Respondent also notes that Petitioner  
25 failed to submit corrected Form 944 for the taxable

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1 year 2012, as requested by the collection settlement  
2 officer.

3           Petitioner does not dispute these basic  
4 facts and we will summarize the employment tax  
5 history, which led the Petitioner to the current  
6 situation. We also note that in the material  
7 submitted by Respondent, a Form 4340 was included,  
8 which summarizes the assessment of tax liabilities  
9 based upon Form 944 for the period ending December  
10 31<sup>st</sup>, 2012 and Forms 990 for the taxable periods  
11 ending December 31<sup>st</sup>, 2011 and December 31<sup>st</sup>, 2012.  
12 Petitioner has not disputed any of the information in  
13 the Form 4340 attached to Respondent's motion.

14           It's undisputed that Petitioner filed a  
15 Form 990 for the period ending December 31<sup>st</sup>, 2011,  
16 but that this form was filed in a delinquent fashion;  
17 and, therefore, there was an addition to tax assessed  
18 by Respondent.

19           Likewise, it is undisputed that Petitioner  
20 filed Form 990 for the period ending December 31<sup>st</sup>,  
21 2012 but also submitted this form in a delinquent  
22 manner and accordingly another addition to tax was  
23 assessed with respect to that form.

24           Finally, Petitioner filed Form 944,  
25 employment tax return, for the period ending December

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1 31<sup>st</sup>, 2012 but failed to pay the entire amount of the  
2 employment taxes reported on that return. The  
3 assessed amounts in excess of the amounts previously  
4 paid, are also the subject of collection in the  
5 present case.

6 On December 17<sup>th</sup>, 2013 Respondent sent to  
7 the Petitioner a notice of federal tax lien with  
8 respect to the Form 990 for December 31<sup>st</sup>, 2012.  
9 Petitioner then timely submitted a request for a  
10 collection due process or equivalent hearing relative  
11 to the December 31<sup>st</sup>, 2012 tax liability.

12 On March 6<sup>th</sup>, 2014 Respondent sent another  
13 notice of federal tax lien to the Petitioner with  
14 respect to Form 990 for the period ending December  
15 31<sup>st</sup>, 2011 and Form 944 for the period ending December  
16 31<sup>st</sup>, 2012. On March 25<sup>th</sup>, 2014 Petitioner submitted  
17 another request for collection due process or  
18 equivalent hearing with respect to those liabilities.

19 On May 29<sup>th</sup>, 2014 Respondent's settlement  
20 officer sent a letter to the Petitioner offering the  
21 collection due process hearing with respect to all  
22 the periods in dispute. In this letter the  
23 settlement officer requested financial information,  
24 including all the information required for Form 433-  
25 B, which would involve underlying financial

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1 statements. The settlement officer also requested  
2 that the Petitioner file delinquent tax returns and  
3 file a corrected Form 944, for 2012. The letter  
4 requested that this information be provided by June  
5 21<sup>st</sup>, 2014.

6 After a series of telephone calls and  
7 messages, a telephone hearing was held with  
8 Petitioner's officer, Terrace Nelson, on July 1<sup>st</sup>,  
9 2014. The Petitioner did not provide any of the  
10 requested information prior to that telephone hearing  
11 and subsequent to that hearing no additional  
12 information was provided.

13 On July 24<sup>th</sup>, 2014 Respondent issued a  
14 notice of determination with respect to the  
15 liabilities previously discussed and on August 5<sup>th</sup>,  
16 2014 Petitioner timely filed a petition to have this  
17 Court review Respondent's collection determination.

18 Since the tax liabilities are not properly  
19 in dispute, because Petitioner has not provided any  
20 information to dispute those and did not dispute  
21 those liabilities at the hearing on the motion for  
22 summary judgment, Respondent is subject to a review  
23 for abuse of discretion in the present matter. Goza  
24 v. Commission, 114 T.C. 176 (2000).

25 In the petition filed in this case

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1 Petitioner makes allegations that Petitioner is  
2 exempt from employment tax liability and cites  
3 Section 501(c). However, Petitioner's assertion is  
4 incorrect, as Petitioner is not exempt from  
5 employment tax liabilities and <sup>Section</sup> 501(c) only applies to JRG  
6 income tax liabilities. Petitioner did not pursue  
7 this argument at the hearing on the motion for  
8 summary judgment and has apparently abandoned this  
9 position.

10 At the hearing Petitioner's representative  
11 submitted information demonstrating that Petitioner  
12 had submitted an offer in compromise to Respondent  
13 after the case was docketed, and this offer in  
14 compromise was entered into the record at the  
15 hearing. We certainly wish Petitioner good fortune  
16 with Respondent and we hope the case is resolved via  
17 the offer in compromise. However, this offer in  
18 compromise is not a defense to the assertions in  
19 Respondent's motion for summary judgment, as it was  
20 not submitted for review by Respondent's settlement  
21 officer, and based upon established precedent of this  
22 Court, we will not consider information which was not  
23 made available to the settlement officer. See  
24 Giamelli v. Commissioner, 129 T.C. 107 (2007).

25 Under Section 6330(c)(3) the determination

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1 of the settlement officer must verify the  
2 requirements of applicable law to administrative  
3 procedures, consider the issues raised by the  
4 taxpayer, consider whether the proposed collection  
5 action balances the need for efficient collection of  
6 taxes with the legitimate concerns of the person that  
7 any collection be no more intrusive than necessary.

8           We find that the information submitted in  
9 support of the motion for summary judgment  
10 establishes that the settlement officer has conducted  
11 these three steps and Petitioner has not contested  
12 that the settlement officer verified these three  
13 basic steps under the collection due process  
14 provisions.

15           Because Petitioner provided no information  
16 for the settlement officer to consider and did not  
17 offer any legitimate defenses to the collection  
18 action via lien, we are left with no recourse but to  
19 sustain Respondent's notices of federal tax lien in  
20 accord with the notice of determination issued by the  
21 settlement officer.

22           Therefore, a decision will be entered for  
23 Respondent.

24           THIS CONCLUDES THE COURT'S ORAL FINDINGS OF  
25 FACT AND OPINION IN THIS CASE.



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1 (Whereupon, at 9:45 a.m., the above-  
2 entitled matter was concluded.)  
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