

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

MELVYN DUANE SALTER,)	
)	
Petitioner,)	
)	
v.)	Docket No. 21045-15 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Pursuant to Rule 152(b) of the 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 proceedings in the above case before the undersigned judge at Columbia, South Carolina, on October 19, 2016, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

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

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
November 3, 2016

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1 Bench Opinion by Judge David Gustafson

2 October ¹⁹~~18~~, 2016

3 Melvyn Duane Salter v. Commissioner

4 Docket No. 21045-15L

5 The Court has decided to render the following as
6 its oral Findings of Fact and Opinion in this case.

7 This Bench Opinion is made pursuant to the authority
8 granted by section 7459(b) of the Internal Revenue
9 Code, and Rule 152 of the Tax Court Rules of Practice
10 and Procedure, and it shall not be relied on as
11 precedent in any other case.

12 This "collection due process" ("CDP") case is an
13 appeal by petitioner pursuant to 26 U.S.C. section
14 6330(d), asking this Court to review the
15 determination by the Office of Appeals of the
16 Internal Revenue Service ("IRS") to sustain a notice
17 of Federal tax lien to collect petitioner's unpaid
18 income tax for the years 2009 and 2010. The case was
19 tried in Columbia, South Carolina, on October 17,
20 2016. Mr. Salter represented himself, and Corey R.
21 Clapper represented the Commissioner. We hold that
22 Mr. Salter did not effectually challenge his
23 liabilities and that IRS Appeals did not abuse its
24 discretion in declining to grant him the status of
25 "currently not collectible" ("CNC"), and we therefore

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1 sustain the filing of the notice of lien.

2 FINDINGS OF FACT

3 Mr. Salter's 2009 and 2010 Federal income tax
4 liabilities

5 Mr. Salter filed his 2009 Federal income return
6 (Ex. 1-J) not in April 2010 but more than a year and
7 a half late in January 2012. (Stip. 2.) That return
8 shows that he made his living in real estate sales
9 and as an auctioneer. The return showed gross
10 receipts of about \$60,000 but reported a loss of
11 \$26,136. The IRS examined his 2009 year (Stip. 3-8)
12 and properly mailed a notice of deficiency ("NOD") to
13 Mr. Salter's last known address (Exs. 8-J, 9-J). The
14 NOD reflected disallowed deductions on two Schedules
15 C for car and truck expenses (\$18,152), legal and
16 professional services (\$6,000 on one Schedule C and
17 \$4,800 on the other), "Other expenses" (\$4,899 on one
18 Schedule C and \$13,898 on the other), and a net
19 operating loss carryforward of \$6,986.

20 Mr. Salter did not file a petition with the Tax
21 Court to challenge the NOD. For purposes of this
22 case it can be assumed that, as he maintains, he did
23 not receive the NOD.

24 Mr. Salter filed his 2010 Federal income return
25 (Ex. 10-J) not in April 2011 but more than eight

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1 months late in January 2012. (Stip. 2.) He did not
2 pay the liability that he reported on his return.

3 Notice of lien

4 On February 23, 2015, the IRS filed with the
5 Register of Deeds in Mr. Salter's county a "Notice of
6 Federal Tax Lien" (Ex. 11-J) with a view toward
7 collection of his unpaid 2009 and 2010 income tax
8 liabilities (Stip. 14), which then totaled \$15,668
9 (Ex. 11-J). The IRS sent to Mr. Salter a "Notice of
10 Federal Tax Lien Filing and Your Right to a Hearing
11 under IRC 6320". (Stip. 15, Ex. 12-J).

12 Agency-level CDP hearing

13 In response, Mr. Salter timely mailed to the IRS
14 a Form 12153, "Request for a Collection Due Process
15 ... Hearing". (Stip. 16, Ex. 13-J.) Mr. Salter's
16 request stated, "I disagree" (which we understand to
17 be a challenge to his underlying liability) and
18 indicated "I cannot pay balance" (which we construe
19 to be a request that he be deemed "currently not
20 collectible" ("CNC"), so that collection activity
21 would be suspended).

22 After IRS Appeals received his request, Appeals
23 Officer Elmer Frazier consulted IRS transcripts to
24 verify that the liabilities that were the subject of
25 the lien notice had been duly assessed. (Stip. 28;

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1 Ex. 22-J.) Appeals sent Mr. Salter a letter dated
2 May 12, 2015, explaining that, if he wanted a
3 "collection alternative" (which includes CNC status),
4 then he would need to (1) provide financial
5 information about himself on Form 433-A, "Collection
6 Information Statement", and (2) file then-overdue tax
7 returns for the years 2012, 2013, and 2014.

8 Communication between Mr. Salter and Appeals
9 broke down almost immediately (see Stip. 22-23),
10 because Mr. Salter had prior experience with Appeals
11 that made him doubt the efficacy of the CDP process,
12 because Mr. Salter believed that the IRS was
13 targeting him, which made him unwilling to provide
14 information about himself or to file any more
15 returns, and because the IRS failed to comply with
16 Mr. Salter's demand, based on privacy concerns, that
17 the IRS use only certified mail for all
18 correspondence with him. Consequently, Mr. Salter
19 did not provide to IRS Appeals any information
20 supporting his liability challenge, any financial
21 information about himself, or any of the delinquent
22 Federal income tax returns.

23 In the absence of the requested information, IRS
24 Appeals issued a notice of determination (Ex. 18-J)
25 on July 17, 2015, sustaining the filing of the notice

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1 of Federal tax lien. (Stip. 24.)

2 Tax Court proceedings

3 On August 14, 2015, Mr. Salter timely filed his
4 petition in the Tax Court, seeking our review of
5 Appeals' notice of determination. At the time he
6 filed his petition, Mr. Salter resided in South
7 Carolina. (Stip. 1.)

8 When the parties appeared for trial, Mr. Salter
9 said that he disputes his underlying liability for
10 2009, the year for which the IRS issued an NOD (but
11 not for 2010, the year in which only his self-
12 reported liability was assessed). The Commissioner
13 did not dispute Mr. Salter's entitlement to challenge
14 his underlying liability. However, Mr. Salter
15 acknowledged that he had not presented to IRS Appeals
16 any substantiation for his liability challenge, and
17 he had no documentary evidence to offer to
18 substantiate a challenge to any of the IRS's
19 adjustments to his 2009 income. He testified that
20 vehicle use was essential to his business but did not
21 offer any detail about his miles driven or expenses
22 incurred. He gave no testimony about legal expenses
23 or "Other expenses", and he did not know what the NOL
24 was derived from.

25 At trial Mr. Salter also contended that IRS

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1 Appeals erred by failing to give him CNC status, as
2 he had requested, but he acknowledged that he had not
3 given Appeals any financial information about himself
4 nor filed his delinquent returns for the years 2012,
5 2013, and 2014.

OPINION

7 I. Burden of proof and standard and scope of review

8 As petitioner, Mr. Salter bears the burden of
9 proof. See Rule 142(a)(1). He makes no contention
10 that the burden has shifted for any reason, and we
11 see no basis in the record for such a contention.

12 In considering IRS Appeals' consideration of
13 collection issues, the Court reviews the
14 administrative determination for an abuse of
15 discretion. See Sego v. Commissioner, 114 T.C. 604,
16 610 (2000).

17 II. Collection Due Process principles

18 When a taxpayer fails to pay any Federal income
19 tax liability after demand, section 6321 imposes a
20 lien in favor of the United States on all the
21 property of the delinquent taxpayer, and section 6323
22 authorizes the IRS to file notice of that lien.
23 However, the IRS must provide written notice of a tax
24 lien filing to the taxpayer within five business
25 days. After receiving such a notice, the taxpayer

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1 may request an administrative hearing before Appeals.
2 Sec. 6320(a)(3)(B), (b)(1). Administrative review
3 is carried out by way of a hearing before IRS Appeals
4 pursuant to section 6330(b) and (c). At the CDP
5 hearing, the appeals officer must make a
6 determination whether the proposed collection action
7 may proceed. The appeals officer ("AO") is required
8 to take into consideration several things:

9 A. Verification

10 First, the appeals officer must obtain
11 verification that the requirements of any applicable
12 law and administrative procedure have been met by IRS
13 personnel (see sec. 6330(c)(3)(A)), and in this case
14 the AO verified the assessments simply by consulting
15 transcripts--something that, in the ordinary course,
16 is proper and sufficient. See Nestor v.
17 Commissioner, 118 T.C. 162, 166-167 (2002). However,
18 Mr. Salter says that he did not receive the 2009 NOD
19 and he therefore infers that the IRS never sent the
20 NOD. If that were true, then the 2009 assessment
21 would be invalid. Arguably, this could be a
22 "verification" issue; and the Internal Revenue Manual
23 does require that, if a CDP taxpayer alleges non-
24 receipt of an NOD, then Appeals should do more. In
25 the absence of the taxpayer's admission of receipt,

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1 Appeals "must review (or attempt to review) the
2 underlying pre-assessment documents that show that
3 the notice was issued and was sent to the taxpayer's
4 last known address. This means in addition to
5 transcripts, you should review or attempt to review
6 the following documents, if possible: A. a copy of
7 the SNOD and B. the certified mailing list for the
8 SNOD to verify whether the SNOD was properly mailed
9 to the taxpayer's last known address." IRM pt.
10 8.22.2.2.4.7.1(4).

11 However, Mr. Salter does not allege that he
12 ever told the AO about his non-receipt of the NOD.
13 Rather, he stopped communicating with Appeals because
14 of his belief that he was being targeted and because
15 of his privacy concerns. We cannot fault Appeals for
16 not pursuing this issue. When Mr. Salter finally did
17 press the issue in this litigation, the Commissioner
18 was able to locate the documents (which the AO had no
19 occasion to locate) that convince us that the NOD was
20 indeed mailed as the IRS alleged.

21 B. Collection alternatives

22 Second, the AO must consider any collection
23 alternatives proposed by the taxpayer (see sec.
24 6330(c)(3)(B), citing sec. 6330(c)(2)). Mr. Salter
25 contends that Appeals erred in this regard by not

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1 granting him CNC status. However, because of his
2 unwillingness to disclose information to the
3 Government, he failed to provide financial
4 information about himself. It is not an abuse of
5 discretion for Appeals to decline to grant a
6 collection alternative when a taxpayer fails to
7 provide financial information to support the
8 alternative. See Huntress v. Commissioner, T.C.
9 Memo. 2009-161. Mr. Salter also failed to file the
10 three years' delinquent returns; and it is not an
11 abuse of discretion for Appeals to decline to grant a
12 collection alternative and sustain a lien when a
13 taxpayer fails to bring himself into compliance with
14 his filing obligations. See I.R.M. pt. 5.16.1.2(4-
15 5); cf. Rodriguez v. Commissioner, T.C. Memo.
16 2003-153.

17 Mr. Salter says that his noncooperation with the
18 IRS was justified by his privacy concerns and his
19 belief that he was being "targeted", and we assume
20 that his attitude is sincere. However, a tax return
21 filed more than a year and a half late that reports
22 gross receipts of \$60,000 but a loss of \$26,136
23 fairly raises questions--questions of the sort that
24 Mr. Salter was unable or unwilling to answer.
25 Someone who files such a tax return should not assume

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1 he is unfairly targeted when the IRS examines his
2 return; and someone with \$15,668 of unpaid taxes
3 should not assume he is unfairly targeted when the
4 IRS does its statutorily mandated job of seeking to
5 collect those taxes. The CDP process is not
6 mandatory but voluntary; and when Mr. Salter elected
7 to pursue that process, it became incumbent on him to
8 provide information. When he failed to do so,
9 Appeals did not abuse its discretion by denying him
10 CNC status and sustaining the notice of lien.

11 C. Intrusiveness

12 Third, the AO must determine "whether any
13 proposed collection action balances the need for the
14 efficient collection of taxes with the legitimate
15 concern of the person that any collection action be
16 no more intrusive than necessary" (see sec.
17 6330(c)(3)), an issue that Mr. Salter has not
18 distinctly raised and that we do not see implicated
19 in this case.

20 D. Challenge to underlying liability

21 In addition, pursuant to section 6330(c)(2)(B) a
22 taxpayer may challenge the underlying tax liability
23 in a CDP hearing, but only if he "did not receive any
24 statutory notice of deficiency for such tax liability
25 or did not otherwise have an opportunity to dispute

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1 such tax liability." Mr. Salter alleges he did not
2 receive the IRS's 2009 NOD, and the Commissioner does
3 not dispute that Mr. Salter was entitled to
4 challenge his 2009 liability at the CDP hearing.

5 However, Mr. Salter did not make such a
6 challenge, because he decided instead not to state
7 his case before Appeals. And in reviewing Appeals'
8 determination, we cannot review issues that Mr.
9 Salter never raised before Appeals. Giamelli v.
10 Commissioner, 129 T.C. 107, 115 (2007) ("we do not
11 have authority to consider section 6330(c)(2) issues
12 that were not raised before the Appeals Office").

13 Even if we did have authority to consider the
14 underlying liability challenge for 2009 that Mr.
15 Salter failed to make before Appeals, we could not
16 sustain his challenge, because he failed altogether
17 to substantiate it at trial. His 2009 return
18 reported, and the IRS disallowed, vehicle expenses of
19 \$18,152; and such expenses are subject to especially
20 strict substantiation rules under section 274(d), see
21 sec. 280F(d)(4); Shea v. Commissioner, 112 T.C. 183,
22 187 (1999); but Mr. Salter gave no substantiation
23 whatsoever. He could not explain (much less
24 substantiate) his net operating loss carryforward of
25 \$6,986; and he made no mention whatsoever of his

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1 claimed legal and professional service expenses
2 totaling \$10,800 or his "Other expenses" totaling
3 \$18,797.

4 We must sustain IRS Appeals' determination
5 upholding the notice of lien.

6 This concludes the Court's oral Findings of Fact
7 and Opinion in this case.

8 (Whereupon, at 10:02 a.m., the above-
9 entitled matter was concluded.)

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