

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

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|-----------------------------------|---|------------------------|
| EARL I. HIGGS, JR.,               | ) |                        |
|                                   | ) |                        |
| Petitioner,                       | ) |                        |
|                                   | ) |                        |
| v.                                | ) | Docket No. 19076-16SL. |
|                                   | ) |                        |
| COMMISSIONER OF INTERNAL REVENUE, | ) |                        |
|                                   | ) |                        |
| Respondent.                       | ) |                        |

**ORDER AND DECISION**

This section 6330(d)<sup>1</sup> case is before the Court on respondent’s Motion for Summary Judgment, filed November 4, 2016. Petitioner has not responded to the motion.<sup>2</sup> That being so, we proceed as though the facts relied upon by respondent in support of his motion are not in dispute. Those facts are easily summarized below.

In a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated July 29, 2016 (notice), respondent determined that a levy is an appropriate collection action with respect to petitioner’s outstanding 2008 and 2009 Federal income tax liabilities.

2008

Apparently, petitioner was obligated to file a 2008 Federal income tax return, but he failed to do so. He was issued a notice of deficiency for that year, and he did not petition the Tax Court in response to that notice of deficiency.

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<sup>1</sup>All section references are to the Internal Revenue Code of 1986, as amended. All Rule references are to the Tax Court Rules of Practice and Procedure, available on the internet at [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

<sup>2</sup>By Order dated November 7, 2016, petitioner’s response to respondent’s motion was made due on November 28, 2016.

Consequently, in due course and in accordance with section 6213(c), on March 21, 2011, respondent assessed the deficiency and additions to tax shown in the notice of deficiency, along with interest that had accrued up until that date (2008 liability). The notice of Federal tax lien filed with respect to the 2008 liability was held to be an appropriate collection action in an Order and Decision, entered on September 18, 2013, in Higgs v. Commissioner, Docket No. 24213-12. In that Order and Decision we found that because petitioner received a notice of deficiency for 2008, he was precluded from challenging the existence or the amount of the 2008 liability in that proceeding.

### 2009

Petitioner's 2009 Federal income tax liability was assessed, along with related amounts, on the basis of the tax liability reported on, but not paid with his 2009 Federal income tax return. See sec. 6201(a)(1).

### Respondent's Collection Action

In a Notice of Intent to Levy, dated January 14, 2015, issued pursuant to section 6330(a) respondent proposed to levy upon, or "seize", petitioner's "property or rights to property" in order to collect petitioner's then outstanding 2008 and 2009 Federal income tax liabilities (underlying liabilities). Following an administrative hearing, that collection action was determined to be an appropriate collection action in the notice, and this appeal followed.

At the administrative hearing petitioner claimed that a substantial portion of the underlying liabilities had been paid by check, but he failed to support that claim, which should have been easy to do by bank statements or canceled checks. Respondent's settlement officer reviewed respondent's records and found no evidence of the payment(s) petitioner claims to have made. At the administrative hearing petitioner also requested a collection alternative to the proposed levy, but he failed to supply the settlement officer with the necessary financial information to support the alternative he proposed.

Petitioner does not claim here that respondent's refusal to allow a collection alternative to the proposed levy is an abuse of discretion, and it would have done him little good if he did. It is well settled that a taxpayer's failure to supply financial information in support of a collection alternative proposed by the taxpayer justifies respondent's rejection of that collection alternative. See, e.g.,

Mahlum v. Commissioner, T.C. Memo. 2010-212. Instead, in the petition petitioner claims, as he did at the administrative hearing, that respondent has failed to give him credit for amounts paid towards the underlying liabilities. If only by implication, and in the absence of any response from petitioner to respondent's motion, we view petitioner's claim to suggest that respondent's determination to proceed with the proposed collection action is an abuse of discretion because the settlement officer failed to investigate as required by section 6330(c)(1). If that is petitioner's position, then it must be rejected because the materials submitted by respondent in support of his motion show that the settlement officer proceeded as required under the statutory scheme. Other than petitioner's unsubstantiated contention that he has not been credit for amounts paid towards the underlying liabilities, petitioner has submitted nothing that suggests, much less establishes, otherwise.

Respondent's submissions show that he has proceeded as required under section 6330. Those submissions further show that respondent is entitled to decision as a matter of law. See Rule 121.

That being so, it is

ORDERED that respondent's motion is granted. It is further

ORDERED AND DECIDED that respondent may proceed with collection as determined in the notice.

**(Signed) Lewis R. Carluzzo**  
**Special Trial Judge**

ENTERED: **MAY 30 2017**