

or a clearly erroneous analysis of the facts. *Fargo v. Commissioner*, 447 F.3d 706, 709 (9th Cir. 2006).

Ms. Dostert does not dispute any of the contents of the administrative record. What it shows is that this dispute began when Ms. Dostert didn't file a 2008 tax return and the IRS prepared what's called a "substitute for return" under IRC § 6020(b). After it prepared this substitute for return it sent Ms. Dostert a notice of deficiency, which is a notice that it sends to taxpayers whom it claims owe taxes. This notice of deficiency is important because it starts a 90-day period during which a taxpayer can file a petition in Tax Court to challenge the tax bill that the IRS says she owes.

Ms. Dostert never filed such a petition. After waiting several months, the IRS realized she hadn't filed a petition and began trying to collect what it said she owed. It sent her notices that it was putting a lien on her property and would levy (which means seize) her property to pay the tax bill. This time, Ms. Dostert did contact the IRS and she asked for a collection due process hearing under IRC §§ 6320 and 6330. The reason that she gave was that "2008 tax returns filed - no taxes owed."

This is, in tax lingo, a "challenge to the underlying liability," because Ms. Dostert is claiming that she doesn't owe as much as the IRS says she does. This is not unusual, because when it prepares a substitute for return the IRS may have information on the income a person has received but rarely has any information about possible deductions. The IRS officer who ran Ms. Dostert's CDP hearing understood this, and gave her an opportunity to file a signed 2008 return -- and explained that if that return was valid, it might wipe out (or at least reduce) her tax bill. The officer's first request for a signed return was on July 13, 2016. The officer made other requests, but Ms. Dostert never sent a signed return in -- even though she did send the IRS an *unsigned* return. (The difference is important, because the signature is an acknowledgment that the return is true and complete.)

The officer kept asking, and Ms. Dostert kept not sending in a signed return. The officer finally gave up and issued the notice of determination in November 2016. Ms. Dostert filed a timely petition with our Court. In that petition she explained the problems she had had in preparing a return and promised again that she would do so.

She did not. The IRS moved for summary judgment on May 26, 2017. We gave Ms. Dostert a chance to answer the motion, which she did last month. She attached a 2008 tax return, which again lacked her signature.

This is not acceptable; moreover, it's not a good answer to the IRS's motion. Ms. Dostert received a notice of deficiency years ago and never challenged her liability then. She also never submitted a signed 2008 return at all. Under these circumstances, it was not error of any sort for the officer to conclude that the lien and levy should be upheld. It is therefore

ORDERED that respondent's May 26, 2017 motion for summary judgment is granted. It is also

ORDERED and DECIDED that respondent may proceed with the collection of petitioner's federal income-tax liabilities for the tax year 2008 as described in the Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 of the Internal Revenue Code, dated November 16, 2016.

**(Signed) Mark V. Holmes
Judge**

ENTERED: **AUG 28 2017**