

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

ARMANDO E. GARZA & BRENDA GARZA,)	
)	
Petitioners,)	
)	
v.)	Docket No. 1310-16SL
)	
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 petitioners and to respondent a copy of the pages of the transcript of the trial in the above case before Chief Special Trial Judge Lewis R. Carluzzo at Houston, Texas, on September 21, 2017, 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, an appropriate Order and Decision will be entered granting respondent’s motion for summary judgment, filed June 21, 2017.

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

Dated: Washington, D.C.
October 5, 2017

SERVED Oct 06 2017

1 BENCH OPINION BY:

2 CHIEF SPECIAL TRIAL JUDGE LEWIS R. CARLUZZO

3 SEPTEMBER 21, 2017

4 CASE NAME: ARMANDO E. GARZA AND BRENDA GARZA

5 DOCKET NUMBER: 1310-16SL

6 The Court has decided to render oral findings of
7 fact and opinion in this case, and the following
8 represents the Court's oral findings of fact and opinion
9 (bench opinion). Section references contained in this
10 bench opinion are to the Internal Revenue Code of 1986, as
11 amended, in effect for the relevant period. Rule
12 references are to the Tax Court Rules of Practice and
13 Procedure.

14 This section 6330(d) proceeding is subject to
15 the Small Tax Case provisions of section 7463 and Rules
16 170 through 175. This bench opinion is made pursuant to
17 the authority granted by section 7459(b) and Rule 152.
18 Except as provided in Rule 152(c), this bench opinion
19 shall not be cited as authority, and pursuant to section
20 7463(b) the decision entered in this case shall not be
21 treated as precedent for any other case.

22 This case is now before the Court on
23 respondents' motion for summary judgment, filed June 21,
24 2017. A hearing was conducted on respondent's motion on
25 September 20, 2017, in Houston, Texas. Susan Greene

1 appeared on behalf of respondent and argued in support of
2 the motion. Eugene P. Tausk appeared on behalf of
3 petitioners and was heard.

4 Giving due regard to the representations
5 contained in: (1) respondent's motion, and (2)
6 petitioners' response, filed September 13, 2017; and
7 considering the presentations made by the parties at the
8 hearing, the Court is satisfied that there is no genuine
9 issue as to any material fact in this case, and for the
10 following reasons, that respondent is entitled to decision
11 as a matter of law. Consequently, disposition of this
12 case upon respondent's motion is appropriate. See Rule
13 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520
14 (1992), aff'd, 17 F.3d. 965 (7th Cir. 1994).

15 The undisputed facts relevant to the resolution
16 of the respondent's motion are easily summarized. In a
17 Notice of Determination Concerning Collection Action(s)
18 Under Section 6320 and/or 6330, dated December 28, 2015
19 (notice), respondent determined that a levy is an
20 appropriate collection action with respect to petitioners'
21 outstanding 2012 Federal income tax liability (underlying
22 liability). The underlying liability was assessed in due
23 course following the issuance of a notice of deficiency
24 mailed to petitioner at their last known address on August
25 25, 2014. Petitioners do not dispute respondent's claim

1 that they received that notice of deficiency.

2 By letter dated July 18, 2015, petitioners were
3 advised that respondent intended to levy (proposed
4 collection action) in order to collect the underlying
5 liability. That letter also advised petitioners of their
6 right to challenge that proposed collection action by
7 requesting an administrative hearing, which they did. See
8 sec. 6630(a) and (b). As it turned out, among the issues
9 that could have been raised at the administrative hearing,
10 See sec 6330(c)(2), the only issue petitioners raised at
11 the administrative hearing amounts to a challenge to the
12 existence or the amount of the underlying liability.

13 Similarly, the petition filed in this case - strike that -
14 Similarly, the petition filed in this Court in response to
15 the notice raises only issues relating to the existence or
16 the amount of the underlying liability. Petitioners'
17 challenge to the existence or the amount of the underlying
18 liability continues in their September 13, 2017, response
19 to respondent's motion.

20 Under the circumstances, there is really very
21 little for the Court to decide. Petitioners do not seek
22 an alternative to the proposed collection action, and, as
23 respondent motion correctly points out, petitioners are
24 not entitled to challenge the under lying liability in
25 this proceeding because they received a notice of

1 deficiency with respect to that liability. See sec.
2 6330(c)(2)(B).

3 Otherwise, and in all other respects, respondent
4 has shown that he has satisfied the procedural
5 requirements imposed upon him by section 6330, and
6 petitioners do not suggest otherwise. It follows that
7 respondent's motion is well made and should be granted.

8 In closing, we think it appropriate to note that
9 the resolution of this matter says nothing about the
10 merits of petitioners' claim that the underlying liability
11 is overstated. To that end, and as advised by
12 respondent's counsel, petitioners are free to pursue
13 whatever remedies might be available to them independent
14 of this proceeding in an attempt to give effect to their
15 claim.

16 To reflect the foregoing, an appropriate order
17 and decision will be entered granting respondent's motion
18 and allowing respondent to proceed with collection as
19 determined in the notice.

20 This concludes the Court's oral findings of fact
21 and opinion in this case."

22 (Whereupon, at 11:11 a.m., the above-entitled
23 matter was concluded.)

24
25