

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

MARK EVON GRIMES,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 594-17SL.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER AND DECISION**

This collection case is calendared for trial at the session of the Court commencing January 8, 2018, at Birmingham, Alabama. Mr. Grimes seeks review under section 6330(d)(1) of the Commissioner’s determination to sustain a lien to recover Federal income tax owed for 2008.<sup>1</sup> The Commissioner moved for summary judgment under Rule 121, arguing that the settlement officer did not abuse her discretion by not granting Mr. Grimes a collection alternative. The Court ordered Mr. Grimes to respond to the motion. Mr. Grimes submitted a response and solely disputed the underlying liability. Because we find that there is no genuine dispute as to any material fact, we grant the Commissioner’s motion for summary judgment.

**Background**

Mr. Grimes filed his 2008 Federal income tax return late on March 9, 2012. Mr. Grimes attached Form 2555, Foreign Earned Income, to that return, claiming a foreign earned income exclusion of \$85,092.

The Commissioner sent a notice of deficiency to Mr. Grimes on March 14, 2013. The notice was mailed to the same address used by Mr. Grimes throughout the duration of this case. In the notice, the Commissioner disallowed Mr. Grimes’

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<sup>1</sup>Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the year at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

foreign earned income exclusion. Mr. Grimes did not respond to the notice. No further action regarding this tax year was taken until May 3, 2016, when the Commissioner issued a notice of Federal tax lien.

After receipt of the notice of Federal tax lien, Mr. Grimes timely submitted Form 12153, Request for a Collection Due Process or Equivalent Hearing, to the Commissioner. On August 22, 2016, an IRS settlement officer sent Mr. Grimes a letter scheduling a telephonic hearing for September 19, 2016, and requesting that he provide a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals.

During the scheduled hearing, Mr. Grimes disputed the underlying liability. [PDF 16]. The settlement officer would not discuss the underlying liability and attempted to discuss collection alternatives. Mr. Grimes refused to discuss collection and did not submit Form 433-A. The IRS issued a notice of determination on December 1, 2016, sustaining the lien.

Mr. Grimes filed a timely petition with the Tax Court under section 6330(d)(1) challenging the Commissioner's determination. In that petition, Mr. Grimes challenges the underlying liability, asserting that he was entitled to a foreign earned income exclusion in 2008. At the time of the petition, Mr. Grimes resided in Alabama.

The Commissioner filed a motion for summary judgment on October 30, 2017. In his motion, the Commissioner argues that the settlement officer did not abuse her discretion in denying Mr. Grimes a collection alternative because Mr. Grimes never proposed one. The Court ordered a response from Mr. Grimes. Mr. Grimes responded and asserted the same argument as stated in his petition. He objected to the motion for summary judgment.

### Discussion

The issue before this Court is whether we should grant the Commissioner's motion for summary judgment. Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in controversy. We may grant summary judgment only if there is no genuine dispute as to any material fact.<sup>2</sup>

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<sup>2</sup>Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute as to any material fact.<sup>3</sup> “In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party.”<sup>4</sup> When a motion for summary judgment is made and properly supported, the nonmoving party may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine dispute for trial.<sup>5</sup>

In a collection hearing, a taxpayer may raise any issue that is relevant to an unpaid tax or proposed lien, including challenges to the appropriateness of the collection action and offers of collection alternatives.<sup>6</sup> A taxpayer may challenge the existence or amount of the underlying tax liability if the taxpayer did not have the opportunity to dispute it;<sup>7</sup> however, the taxpayer may not dispute this if they had a prior opportunity.<sup>8</sup>

This Court is a court of limited jurisdiction and our jurisdiction in collection cases is defined by the scope of the determination that the settlement officer is required to make.<sup>9</sup> Here, the underlying liability may not be placed in issue. Mr. Grimes received a notice of deficiency with respect to his 2008 tax liability in 2013. This notice provided Mr. Grimes the opportunity to contest the determination. Because Mr. Grimes had a prior opportunity to challenge his underlying liability for 2008, he may not challenge it in this proceeding.<sup>10</sup>

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<sup>3</sup>Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff’d, 17 F.3d 965 (7th Cir. 1994).

<sup>4</sup>FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

<sup>5</sup>Rule 121(d).

<sup>6</sup>Sec. 6330(c)(2)(A).

<sup>7</sup>Sec. 6330(c)(2)(B).

<sup>8</sup>Bell v. Commissioner, 126 T.C. 356, 358 (2006).

<sup>9</sup>See sec. 7442; Freije v. Commissioner, 125 T.C. 14, 25 (2005).

<sup>10</sup>See Bell v. Commissioner, 126 T.C. at 358; Sec. 301.6320-1(e)(3), Q&A-E7, Proced. & Admin. Regs.; Sec. 301.6330-1(e)(3), Q&A-E7, Proced. & Admin. Regs.

Where the validity of the underlying liability is not properly at issue, we review the Commissioner's determination for abuse of discretion.<sup>11</sup> Mr. Grimes may prove abuse of discretion by showing that the Commissioner exercised his discretion arbitrarily, capriciously, or without sound basis in fact or law.<sup>12</sup> The determination by the settlement officer must take three things into consideration: (1) verification that the requirements of the applicable law and administrative procedure have been met, (2) issues raised by the taxpayer, and (3) whether any proposed collection action balances the need for efficient tax collection with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.<sup>13</sup> We take each in turn.

The settlement officer verified that all legal and procedural requirements were met before the filing of the notice of determination.

The settlement officer did not abuse her discretion when considering the issues raised by Mr. Grimes. Mr. Grimes had been given a reasonable opportunity to dispute his underlying liability. Once a taxpayer has had this opportunity but has failed to avail themselves of it, the settlement officer may proceed in making a determination by reviewing the case file.<sup>14</sup>

The settlement officer did not abuse her discretion in not considering collection alternatives. It is not an abuse of discretion for a settlement officer to not consider collection alternatives when the person seeking a collection alternative does not propose one.<sup>15</sup>

Finally the settlement officer determined that the lien was no more intrusive than necessary.

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<sup>11</sup>Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000).

<sup>12</sup>See Giamelli v. Commissioner, 129 T.C. 107, 111 (2007).

<sup>13</sup>Secs. 6320(c), 6330(c)(3); Lunsford v. Commissioner, 117 T.C. 183, 184 (2001).

<sup>14</sup>See Oropeza v. Commissioner, T.C. Memo. 2008-94, aff'd, 402 F. App'x 221 (9th Cir. 2010); Sec. 301.6330-1(d)(2), Q&A-D7, Proced. & Admin. Regs.

<sup>15</sup>Kendricks v. Commissioner, 124 T.C. 69, 79 (2005).

Conclusion

There is no genuine dispute as to any material fact with respect to Mr. Grimes' 2008 tax liability, and we must render a decision for the Commissioner as a matter of law. Accordingly it is

ORDERED that the Commissioner's motion for summary judgment, filed October 30, 2017, is granted. It is further

ORDERED AND DECIDED that Commissioner's determination as set forth in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated December 1, 2016, is sustained.

**(Signed) Ronald L. Buch**  
**Judge**

Entered: **DEC 18 2017**