

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DRC

LAWRENCE EDWARD GRAHAM,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 9815-17SL.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
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	)	

**ORDER AND DECISION**

On February 27, 2018, respondent filed a Motion For Summary Judgment seeking to sustain a Notice Of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated April 6, 2017 (notice of determination).<sup>1</sup> The notice of determination upheld a proposed levy collection action with respect to petitioner’s outstanding income tax liabilities for the taxable (calendar) years 2005, 2006, 2008, 2009, and 2010. On March 15, 2018, respondent filed a First Supplement to his pending Motion For Summary Judgment. Most recently, on March 22, 2018, petitioner filed a Motion To Deny Summary Judgment, which, despite its nomenclature, is essentially an objection to the granting of respondent’s motion, as supplemented.

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy “if the pleadings, answers to interrogatories,

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<sup>1</sup> Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended and in effect at all relevant times. All Rule references are to the Tax Court Rules of Practice and Procedure.

depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine dispute or issue as to any material fact and that a decision may be rendered as a matter of law.” Rule 121(a) and (b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff’d, 17 F.3d 965 (7th Cir. 1994); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

The Court has jurisdiction under section 6330 to review the Commissioner’s administrative decision. Sec. 6330(d)(1); see Iannone v. Commissioner, 122 T.C. 287, 290 (2004). Where the underlying liability is not at issue, as it is not in the instant case, the Court reviews the Commissioner’s administrative decision for abuse of discretion. Goza v. Commissioner, 114 T.C. 176, 182 (2000). Whether an abuse of discretion has occurred depends on whether the exercise of discretion is without reasonable basis in fact or law. Freije v. Commissioner, 125 T.C. 14, 23 (2005); Ansley-Sheppard-Burgess Co. v. Commissioner, 104 T.C. 367, 371 (1995).

Section 6330 prescribes procedures for administrative and judicial review of respondent’s proposed levy actions. In rendering an administrative determination in a collection review proceeding under section 6330, the Internal Revenue Service Office of Appeals (Appeals Office) must verify that the requirements of all applicable laws and administrative procedures were met in processing the case. Sec. 6330(c)(1). The Appeals Office also must consider any issues raised by the taxpayer, including offers of collection alternatives, appropriate spousal defenses, and challenges to the appropriateness of the collection action. Sec. 6330(c)(2)(A). Finally, the Appeals Office must consider whether the collection action balances the need for efficient collection against the taxpayer’s concern that collection be no more intrusive than necessary. Sec. 6330(c)(3)(C).

In the present case petitioner responded to a Notice Of Intent To Levy dated September 30, 2016, by filing with respondent a Form 12153, Request For A Collection Due Process Or Equivalent Hearing. As a collection alternative, petitioner checked “I Cannot Pay Balance”. On December 28, 2016, the settlement officer sent a letter to petitioner scheduling an administrative hearing, and requested a completed Form 433-A, Collection Information Statement, as well as signed Federal income tax returns for 2011, 2012, 2013, 2014, and 2015, in order to consider petitioner’s request for a collection alternative.

At no time during the administrative process did petitioner or his power of attorney provide a Form 433-A or other financial information. It is not an abuse of discretion for the Appeals Office to reject a collection alternative and sustain a proposed collection action on the basis of the failure of a taxpayer to submit

requested financial information. See, e.g., Giamelli v. Commissioner, 129 T.C. 107,115-116 (2007); Taylor v. Commissioner, T.C. Memo. 2009-27.

Furthermore, and independent of the foregoing, petitioner failed to submit the requested tax returns to the Internal Revenue Service (IRS) prior to the issuance of the notice of determination on April 6, 2017. The IRS did not receive petitioner's: (1) 2011 income tax return until May 18, 2017; (2) 2012, 2013, and 2014 income tax returns until May 19, 2017, and (3) 2015 income tax return until May 22, 2017. In short, petitioner was delinquent by years in filing required income tax returns, and he failed to correct such delinquency during the administrative phase of the present case. Case law clearly holds that it is not an abuse of discretion for the Appeals Office to decline to consider a collection alternative if the taxpayer is not currently in compliance with Federal tax laws, e.g., by filing all required tax returns. See e.g., Pough v. Commissioner, 135 T.C. 344, 351 (2010); Huntress v. Commissioner, T.C. Memo. 2009-161, at \*5.

Finally, respondent's motion demonstrates that the settlement officer complied with all of the requirements set forth in the controlling statutes, and nothing in the record suggests otherwise.

In order to give effect to the foregoing, it is hereby

ORDERED that petitioner's Motion To Deny Summary Judgment, filed March 22, 2018, is denied. It is further

ORDERED that respondent's Motion For Summary Judgment, filed February 27, 2018, and supplemented March 15, 2018, is granted. It is further

ORDERED that this case is stricken for trial from the Court's trial session commencing April 30, 2018, at Washington, DC. It is further

ORDERED and DECIDED that respondent may proceed with the proposed collection action (levy) in respect of petitioner's outstanding income tax liabilities for 2005, 2006, 2008, 2009, and 2010, as determined in respondent's notice of determination dated April 6, 2017, upon which notice this case is based.

[continued on next page]

Petitioner is advised that he need not appear in court on April 30, 2018, in Washington, DC, as this case will not be called from the calendar at that time because of the action taken by the Court in this Order And Decision granting respondent's Motion For Summary Judgment and entering decision in respondent's favor.

**(Signed) Robert N. Armen**  
**Special Trial Judge**

Entered: **MAR 30 2018**