

UNITED STATES TAX COURT  
WASHINGTON, DC 20217 PA

TROY L. ENGLISH, )  
)  
Petitioner, )  
)  
v. ) Docket No. 16134-16 L.  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent )

**ORDER**

This collection case comes before the Court on the Commissioner’s motion for summary judgment filed January 17, 2018. The Commissioner argues that the settlement officer did not abuse his discretion when he denied Mr. English’s request for currently not collectable status. Following the collection hearing, Mr. English has experienced a material change in circumstances that has affected his ability to pay. We need not reach the issues raised in the Commissioner’s motion because we remand this case for reconsideration taking into account these changed circumstances.

Background

On November 12, 2015, the Commissioner issued Mr. English a notice of intent to levy his property to collect tax and penalties for 2005, 2010 and 2011. Mr. English filed a Form 12153, Request for a Collection Due process or Equivalent Hearing, on November 23, 2015. On his Form 12153, Mr. English stated that he could not pay the balance. He also attached a letter stating that he had “been in and out of [the] hospital” for the past several months.

On February 18, 2016, the settlement officer assigned to Mr. English’s case sent Mr. English a letter scheduling the hearing for March 23, 2016. The letter also stated that Mr. English needed to submit a completed Form 433-A, Collection Information Statement, for the settlement officer to consider placing Mr. English’s account in currently not collectable status.

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In preparation for the hearing the settlement officer verified that he had no prior involvement with Mr. English, and he reviewed the information regarding Mr. English's outstanding tax liability. On March 23, 2016, the scheduled date of the hearing, the settlement officer called Mr. English but was unable to reach him. He sent Mr. English a follow up letter requesting financial information. Mr. English returned the settlement officer's call and requested more time to submit financial information, which the settlement officer allowed. Soon after, Mr. English submitted his Form 433-A and supporting documents.

The settlement officer reviewed Mr. English's financial information on May 27, 2016. He found that Mr. English did not substantiate many of his expenses and that the information submitted was incomplete. On the basis of the financial information that Mr. English submitted, the settlement officer found that Mr. English could pay the outstanding liabilities. On June 16, 2016, the settlement officer determined that all legal and procedural requirements were met with respect to the proposed levy, that Mr. English did not qualify for currently not collectable status, and that the levy should be sustained. On June 23, 2016, an appeals team manager issued a notice of determination to Mr. English sustaining the levy.

Mr. English filed a timely petition with this Court. While his case has been pending, Mr. English's medical condition worsened. His left leg was amputated above the knee on September 22, 2016. Mr. English has also been unemployed since July 26, 2017.

On January 17, 2018, the Commissioner filed a motion for summary judgment. The Commissioner argues that the settlement officer did not abuse his discretion when he determined that Mr. English's account should not be placed in currently not collectable status and that the levy should be sustained. The Court provided Mr. English an opportunity to respond, which he did.

### Discussion

The question presented to the Court is whether we must grant summary judgment in favor of the Commissioner. However, because of the material change in Mr. English's circumstances, we do not reach the issues presented in the Commissioner's motion.

## Review of Appeals Determinations

In a collection hearing, a taxpayer may raise any issue that is relevant to an unpaid tax or proposed levy, including challenges to the appropriateness of the collection action and offers of collection alternatives.<sup>1</sup> In addition, a taxpayer may challenge the existence or amount of the underlying tax liability if the taxpayer did not have the opportunity to dispute the liability.<sup>2</sup> When the taxpayer does not properly raise the underlying liability, we review the Commissioner's collection determination for an abuse of discretion.<sup>3</sup>

Mr. English did not challenge the underlying liability at any stage in the proceeding. Consequently we normally would review the settlement officer's determination for an abuse of discretion.

A taxpayer may prove an abuse of discretion by showing that the Commissioner exercised his discretion arbitrarily, capriciously, or without sound basis in fact or law.<sup>4</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>5</sup>

Where there has been a material change in circumstances we need not find that the settlement officer abused his discretion. We can remand a case to appeals based on a material change in circumstances. In Churchill v. Commissioner, T.C. Memo. 2011-182, 102 T.C.M. (CCH) 116, 118-119 (2011), we held that "remand is appropriate in cases where there has been a material change in a taxpayer's

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<sup>1</sup>Sec. 6330(c)(2)(A).

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

<sup>3</sup>Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000).

<sup>4</sup>See Giamelli v. Commissioner, 129 T.C. 107, 111 (2007).

<sup>5</sup>Secs. 6320(c), 6330(c)(3); Lunsford v. Commissioner, 117 T.C. 183, 184 (2001).

factual circumstances between the time of the hearing and the time a case lands on our trial calendar.”

A settlement officer has not abused his discretion when he fails to consider something that he did not or could not know about.<sup>6</sup> A material change in circumstances, such as the amputation of a leg coupled with loss of employment, is such a situation. Rather than leaving a taxpayer with no recourse when his circumstances have materially changed and rather than making our own determination with respect to collection, we can remand for further consideration of these new circumstances.<sup>7</sup>

We find that Mr. English’s medical condition coupled with his loss of employment constitute a material change in his factual circumstances. We remand this case to appeals for consideration of this change in circumstances. Accordingly, it is

ORDERED that the Commissioner’s motion for summary judgment filed January 17, 2018, is denied. It is further

ORDERED that this case is remanded to the Commissioner’s Office of Appeals for further consideration consistent with this Order. It is further

ORDERED that jurisdiction is retained by the undersigned. It is further

ORDERED that the parties shall file a joint status report by August 24, 2018, and attach any supplemental notice of determination issued to Mr. English. In lieu of a joint status report, either party may file a status report stating that the other party has reviewed and agreed to the content of the report.

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

Dated: Washington, D.C.  
June 18, 2018

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<sup>6</sup>Giamelli v. Commissioner, 129 T.C. 107, 115 (2007).

<sup>7</sup>Churchill v. Commissioner, T.C. Memo. 2011-182, 102 T.C.M. (CCH) 116, 118-119 (2011).