

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DAVID ANDREW LUFKIN, SR., )  
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 ) **CZ**  
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 ) Petitioner, )  
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 ) v. ) Docket No. 7653-17 L  
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 ) COMMISSIONER OF INTERNAL REVENUE, )  
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 )  
 ) Respondent. )

**ORDER**

This section 6330(d)<sup>1</sup> case is before the Court on the parties' cross-motions for summary judgment -- respondent's filed December 29, 2017, and petitioner's filed January 29, 2018. In addition to other issues raised in the pleadings and addressed in the motions, petitioner challenges the existence and/or the amounts of the underlying liabilities, that is, certain employment tax liabilities for the taxable periods ended October 31, 1998, and December 31, 1998. As noted in respondent's motion, the Court will review, de novo, that challenge. See Seago v. Commissioner, 114 T.C. 604 (2000).

According to respondent, petitioner is liable for the underlying liabilities; according to petitioner he is not responsible for the underlying liabilities because, in addition to other reasons, the underlying liabilities are attributable to a different taxpayer. The dispute between the parties on the point represents a dispute as to a material fact. That being so, resolution of the matter upon summary judgment is not appropriate. See Rule 121. That being so, it is

ORDERED that respondent's motion for summary judgment, filed December 29, 2017, is denied. It is further

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<sup>1</sup>Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

ORDERED that petitioner's cross-motion for summary judgment, filed January 29, 2018, is also denied.

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

Dated: Washington, D.C.  
July 9, 2018