

UNITED STATES TAX COURT  
WASHINGTON, DC 20217 PA

WILLIAM B. MCHENRY, JR., )  
)  
Petitioner, )  
)  
v. ) Docket No. 607-18 L  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent. )

**ORDER AND DECISION**

This section 6330(d)<sup>1</sup> case is before the Court on respondent’s Motion for Summary Judgment, filed on April 4, 2018. Petitioner’s objection to respondent’s motion was filed April 26, 2018. Giving due regard to the representations contained in the parties’ submissions, the Court is satisfied that respondent’s motion can be resolved without the need for a hearing. See Rule 50(b)(3). The undisputed facts relevant to the disposition of respondent’s motion are drawn from the parties’ submissions and summarized below.

In a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated December 5, 2017 (notice), respondent determined that both a lien and a levy are appropriate collection actions with respect to petitioner’s outstanding 2015 Federal income tax liability (underlying liability). The underlying liability is based on petitioner’s 2015 tax return, an addition to tax for failure to make estimated tax payments, an addition to tax for late payment, and interest. Petitioner did not at the administrative hearing and does not in this proceeding challenge the existence or the amount of the underlying liability.

If, as here, the validity of the underlying liability is not at issue in a case, then the Court will review respondent’s determination for abuse of discretion. See Giamelli v. Commissioner, 129 T.C. 107, 111 (2007). That is, we review the

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

determination to see if it was arbitrary, capricious, or without sound basis in fact or law. Id.

According to the notice, petitioner failed to provide requested financial information and was not current with his Federal estimated tax payments for the 2017 tax year. Petitioner does not dispute these facts. Instead, petitioner argues that the settlement officer abused his discretion because the settlement officer (1) failed to consider a collection alternative, and/or (2) refused to consider the underlying liability as “currently not collectible”.

Petitioner failed to provide the financial information requested by the settlement officer, and he was not current with his Federal tax obligations during the pendency of the administrative hearing. It is well settled that the Commissioner is justified in rejecting a proposed collection alternative, such as an installment agreement, if as in this case the taxpayer fails to submit requested financial information or is not in compliance with Federal tax laws. See, eg., Pough v. Commissioner, 135 T.C. 344, 351 (2010); Prater v. Commissioner, T.C. Memo. 2007-241. Petitioner’s reasons for his failures do not persuade us to depart from this well-established principle.

The undisputed facts show that respondent is entitled to decision as a matter of law. Disposition of this matter upon summary adjudication is therefore appropriate. See Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff’d, 17 F.3d 965 (7th Cir. 1994).

Premises considered, it is

ORDERED that respondent’s Motion for Summary Judgment, filed April 4, 2018, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the collection as determined in the notice.

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

ENTERED:     **NOV 08 2018**