

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

ROY G. WEATHERUP & WENDY G.)	
WEATHERUP,)	
)	
Petitioners,)	
)	
v.)	Docket No. 25370-17SL
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioners and to respondent a copy of the pages of the transcript of the trial in the above case before Chief Special Trial Judge Lewis R. Carluzzo at Los Angeles, California, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered for respondent.

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

Dated: Washington, D.C.
December 27, 2018

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
 2 December 6, 2018
 3 Roy G. Weatherup & Wendy G. Weatherup v. Commissioner of
 4 Internal Revenue
 5 Docket No. 25370-17SL

6 THE COURT: The Court has decided to render oral
 7 findings of fact and opinion in this case, and the
 8 following represents the Court's oral findings of fact and
 9 opinion (bench opinion). Section references made in this
 10 bench opinion are to the Internal Revenue Code of 1986, as
 11 amended, in effect for the relevant period, and Rule
 12 references are to the Tax Court Rules of Practice and
 13 Procedure. This bench opinion is made pursuant to the
 14 authority granted by section 7459(b) and Rule 152. The
 15 decision to be entered in this case shall not be treated
 16 as precedent for any other case, and except as provided in
 17 Rule 152(c), this bench opinion shall not be cited as
 18 authority.

19 This section 6330(d) case is before the Court on
 20 respondent's motion for summary judgment, filed September
 21 ~~28~~²¹, 2018. Petitioners' objections to respondent's motion
 22 are embodied in their opposition, filed November 19, 2018.
 23 A hearing was conducted on respondent's motion in Los
 24 Angeles, California, on December 4, 2018. Ping Chang and
 25 Christine A. Fukushima appeared on behalf of respondent



1 and argued in support of the motion. Petitioners
2 appeared, unrepresented (although Roy Weatherup is an
3 attorney) and argued against it. Some of the undisputed
4 facts relied upon by respondent in support of the motion
5 are recited in the following portions of this bench
6 opinion.

7 The income tax liability reported on
8 petitioners' joint 2012 Federal income tax return was not
9 fully paid with that return, although petitioners have
10 made substantial payments towards that liability in the
11 years following the filing of that return. Because of
12 circumstances generally described by petitioners as
13 financial hardships, in December 2013, they made an offer-
14 in-compromise with respect to their then outstanding 2012
15 income tax liability. See sec. 7122. By letter dated
16 July 16, 2015, respondent advised petitioners that their
17 offer-in-compromise had been reviewed and rejected
18 (rejection letter). See sec. 7122(f). The rejection
19 letter also advised petitioners of the reasons for the
20 rejection and their right to appeal the rejection to
21 respondent Office of Appeals, which they apparently did,
22 but not successfully. The rejection letter plays a key
23 role in this proceeding, and the parties disagree over
24 whether the rejection letter is described in section
25 7122(f). We'll focus on their disagreement on the point



1 later in this bench opinion.

2 Petitioners continued to make payments towards
3 their outstanding 2012 income tax liability while their
4 offer-in-compromise was pending from the date it was made
5 through the time they received the rejection letter. By
6 letter dated June 5, 2017, respondent advised petitioners
7 that the then balance of their 2012 income tax liability
8 was subject to levy. See sec. 6330(a). The amount of the
9 income tax liability referenced in that letter was
10 computed as though petitioners' offer-in-compromise had
11 not been accepted. That letter also advised petitioners
12 of their right to request an administrative hearing in
13 order to challenge respondent's proposed collection
14 action, which they did in a timely manner. See sec.
15 6330(b) and (c). Such administrative hearings are
16 sometimes referred to as "due process" hearings, and for
17 convenience, we'll use the same designation in this bench
18 opinion.

19 During the due process hearing petitioners took
20 the position that their 2012 income tax liability had been
21 fully paid because of the offer-in-compromise they
22 previously submitted. According to petitioners, the
23 rejection letter does not satisfy the provisions of
24 section 7122(f), and because, as they see the matter,
25 their offer-in-compromise was not otherwise rejected



1 within 24 months from the date it was submitted, the offer
2 was deemed accepted. As petitioners view the matter, the
3 rejection letter was only a preliminary rejection letter.
4 More on that point later.

5 At the hearing the Court questioned whether
6 petitioners' position constituted a challenge to the
7 existence or the amount of their underlying tax liability.
8 Petitioners seem to think that it did. Respondent
9 disagreed. According to respondent, an offer-in-comprise,
10 if accepted, does not result in an abatement of the tax to
11 which the offer relates. Neither party cited authority
12 for their respective positions, and we need not resolve
13 the dispute between them on the point. As it turns out,
14 whether petitioners' position should or should not be
15 considered a challenge to the existence or the amount of
16 the underlying liability is not consequential to the
17 resolution of the motion here under consideration.

18 Petitioners' approach to, and position taken in
19 the due process hearing, however, does have consequences.
20 At the due process hearing, petitioners challenged only
21 respondent's rejection of the previously made offer-in-
22 compromise. According to petitioners, that rejection
23 failed to take into account their financial hardship at
24 the time and was otherwise inequitable. That being so, as
25 they see it, the rejection of the previously made offer-

1 in-compromise constitutes an abuse of discretion. Because
2 petitioners elected to limit their challenge to
3 respondent's actions in response to the previously
4 submitted offer-in-compromise, they did not submit a new
5 offer-in-compromise during the collection due process
6 hearing, although they were invited to do so by
7 respondent's settlement officer. Furthermore, they did
8 not propose any other collection alternative to the
9 proposed levy. To the extent that they were challenging
10 the existence or the amount of their underlying liability,
11 their challenge rested upon their position that the
12 rejection letter did not satisfy the provisions of section
13 7122(f), and we turn our attention to their position with
14 respect to that section.

15 Section 7122(f) states: "DEEMED ACCEPTANCE OF
16 OFFER NOT REJECTED WITHIN CERTAIN PERIOD. - Any offer-in-
17 compromise submitted under this section shall be deemed to
18 be accepted by the Secretary if such offer is not rejected
19 by the Secretary before the date which is 24 months after
20 the date of the submission of such offer. For purposes of
21 the preceding sentence, any period during which any tax
22 liability which is the subject of such offer-in-compromise
23 is in dispute in any judicial proceeding shall not be
24 taken into account in determining the expiration of the
25 24-month period."



1 According to petitioners, their offer-in-
2 compromise was "not rejected" by the rejection letter.
3 According to petitioners, their offer could not have been
4 rejected until the appeal of what they consider the
5 "preliminary" rejection was completed, and that process
6 did not occur within the 24 month period contemplated in
7 section 7122(f). Respondent disagrees with petitioners
8 with respect to their characterization of the rejection
9 letter as a preliminary rejection, and so does the Court.

10 The language used in the rejection letter is
11 completely consistent with what is contemplated by the
12 statute. Petitioners were advised that their offer-in-
13 compromise was rejected, and that rejection, although
14 subject to an administrative appeal, was unequivocal. The
15 rejection letter advised them why their offer was
16 rejected, and pursuant to section 7122(e), they were
17 advised that the rejection could be administratively
18 appealed. Their right to an administrative appeal of the
19 rejection in no way suggests that their offer-in-
20 compromise was not rejected. The rejection letter, sent
21 to petitioner less than 24 months after their offer-
22 in-compromise was submitted, operated to legally and
23 effectively deny, or reject their offer. That being so,
24 by the time their due process hearing took place, their
25 underlying liability remained as respondent's records had

1 shown, that is, unaffected by their offer-in-compromise.
2 Consequently, even if their challenge during the due
3 process hearing is considered a challenge to the existence
4 or the amount of that liability, their challenge must
5 fail.

6 That leaves only a review of respondent's
7 determination to proceed with collection by levy. Because
8 petitioners did not submit a collection alternative,
9 however, there is really nothing left to review.

10 Otherwise, respondent's motion shows that respondent's
11 settlement officer proceeded as required under section
12 6330, and petitioners do not suggest that he did not.

13 Petitioners' expectation that the settlement
14 officer assigned to conduct the due process hearing should
15 have considered their previously made offer-in-compromise
16 was misplaced. The settlement officer is required to
17 consider only those matters raised during the due process
18 hearing. See sec. 6330(c). The settlement officer could
19 have considered petitioners' entitlement to a new offer-
20 in-compromise based upon the circumstances then in
21 existence, but petitioners elected not to submit one. The
22 settlement officer's failure or refusal to consider a
23 collection alternative not proposed by a taxpayer is hardly
24 an abuse of discretion.

25 Furthermore, petitioners' claim that the



1 administrative record considered by the settlement officer
2 is incomplete is similarly lacking in merit. The item
3 that they claim the settlement officer failed to take into
4 account was not submitted by them during the collection
5 due process hearing, but submitted earlier to respondent
6 in connection with a premature attempt to secure a section
7 6330 administrative hearing. (That attempt was made
8 before petitioners received the requisite collection
9 notice offering them the opportunity to request a due
10 process hearing.)

11 Lastly, we note that petitioners' claim that
12 respondent's motion must be denied because material facts
13 remain in dispute in this case has merit only if the
14 rejection letter was not timely. Because we find that it
15 was, the factual disputes they identified at the hearing
16 are not relevant, and therefore not material. From the
17 material facts that are not in dispute in this case, as
18 outlined above, it follows that respondent is entitled to
19 decision as a matter of law. See Rule 121. That being
20 so, an appropriate order granting respondent's motion will
21 be issued.

22 In closing we note, as respondent did in the
23 notice of determination that invited petitioners to
24 initiate this case, they are entitled to submit a new
25 offer-in-compromise under section 7122 independent of

1 their prior submission, and regardless of the resolution
2 of this case. To reflect the foregoing, decision will be
3 entered for Respondent.

4 This concludes the Court's bench opinion in this
5 matter.

6 (Whereupon, at 11:51 a.m., the above-entitled
7 matter was concluded.)

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