

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DRC

CLEMMIE LEE PENNINGTON, )  
)  
Petitioner(s), )  
)  
v. ) Docket No. 19115-17SL.  
)  
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 petitioner and to respondent a copy of the pages of the transcript of the hearing in the above case before Judge Joseph Robert Goeke at Birmingham, Alabama containing his oral findings of fact and opinion rendered at the trial session at which this case was heard.

In accordance with the oral findings of fact and opinion, respondent's Motion for Summary Judgment, filed October 17, 2018, will be granted and a decision entered for respondent.

**(Signed) Joseph Robert Goeke**  
**Judge**

Dated: Washington, D.C.  
February 12, 2019

**SERVED Feb 12 2019**

1 Bench Opinion by Judge Joseph Robert Goeke  
2 January 9, 2019  
3 Clemmie Lee Pennington v. Commissioner of Internal Revenue  
4 Docket No. 19115-17SL

5 THE COURT: The Court has decided to render oral  
6 findings of fact and opinion in this case, and the  
7 following represents the Court's oral findings of fact and  
8 opinion. The oral findings of fact and opinion shall not  
9 be relied upon as precedent in any other case. This case  
10 was heard pursuant to the provisions of section 7463 of  
11 the Internal Revenue Code<sup>x</sup> ~~in~~ <sup>in</sup> effect, when the petition  
12 was filed. Pursuant to section 7463(b), the decision to be  
13 entered is not reviewable by any other court. And this  
14 opinion shall not be treated as precedent for any other  
15 case.

16 This matter is before the Court on respondent's  
17 motion for summary judgment pursuant to Rule 121 of the  
18 Tax Court Rules of Practice and Procedure. This opinion  
19 is rendered pursuant to Rule 152 and section 7459(b) of  
20 the Internal Revenue Code. Rule references throughout  
21 this opinion are to the Tax Court Rules of Practice and  
22 Procedure, and section references are to the Internal  
23 Revenue Code.

24 This case involves petitioner's challenge to  
25 respondent's attempt to collect via lien liabilities which

1 the petitioner owes regarding income tax. The respondent  
2 and the petitioner have made clear that there is no  
3 dispute in this case regarding the underlying liabilities.  
4 Therefore, the Court reviews the determination to sustain  
5 the lien made by the Appeals Division of the Internal  
6 Revenue Service on the basis of abuse of discretion.

7           Petitioner's position is summarized in the  
8 response to the summary judgment, wherein the petitioner  
9 does not challenge the underlying facts, as stated  
10 previously, but rather argues that petitioner's request  
11 for a lump sum payment offer <sup>in</sup> and compromise, which was JRG  
12 rejected prior to the pending lien action, should have  
13 been renegotiated by respondent. And on that basis,  
14 petitioner believes that he is entitled to challenge the  
15 lien action.

16           At the time the petitioner submitted a request  
17 for a special lump sum payment offer <sup>in</sup> and compromise, he  
18 was paying \$25 a month to the Internal Revenue Service.  
19 He heard an ad that, under certain circumstances,  
20 taxpayers could be relieved of their tax obligations, and JRG  
21 he responded to that ad and agreed to pay \$3,000 to a firm  
22 that submitted a lump sum payment offer <sup>in</sup> and compromise in  
23 the amount of \$100. This offer <sup>in</sup> and compromise was  
24 rejected by the IRS Appeals Office, and that rejection was  
25 confirmed in a letter sent to the petitioner, dated August

1 22nd, 2016.

2 He then entered into an agreement with the IRS  
3 and agreed to pay \$250 a month, and that offer <sup>in</sup>and  
4 compromise was approved. That offer <sup>in</sup>and compromise was  
5 then followed by the filing of a Notice of Federal Tax  
6 Lien which precipitated the hearing in question in this  
7 case.

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8 At that hearing, which was conducted by the IRS  
9 Appeals Division on July 3rd, 2017, petitioner sought to  
10 discuss his previously filed offer <sup>in</sup>and compromise, which  
11 was rejected. This previous offer <sup>in</sup>and compromise had not  
12 been submitted to the appeals officer, but the appeals  
13 officer, nevertheless, informed petitioner that he had a  
14 partial payment agreement in place and, because of the  
15 type of payment plan that he had in place, that a Federal  
16 tax lien was required and that if the petitioner wished to  
17 revisit the offer <sup>in</sup>and compromise process, he needed to  
18 submit a new Form 656, along with a Form 433 information  
19 statement.

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20 The petitioner did not submit this information  
21 in a timely manner, and the settlement officer issued the  
22 notice of determination, which precipitated our  
23 jurisdiction in the present matter.

24 Since the issue before us is simply whether the  
25 IRS abused discretion in not releasing or removing the



1 Federal tax lien, which had been filed and precipitated  
2 the collection and due process hearing, we first  
3 investigate whether the petitioner has offered any basis  
4 on which the lien should be removed.

5 Under section 6323(j) and section 6159, a  
6 Federal tax lien without full payment may be withdrawn  
7 without prejudice if the Federal tax lien was filed  
8 prematurely or otherwise not in accordance with IRS  
9 procedures. The taxpayer entered into an installment  
10 agreement under section 6159. Withdrawal of the Federal  
11 tax lien would facilitate collection of the tax liability,  
12 and the National Taxpayer Advocate consents to the  
13 withdrawal of the Federal tax lien because it is in the  
14 best interest of the taxpayer and the United States.

15 Mere allegations that the Federal tax lien  
16 should not have been filed are insufficient to require the  
17 withdrawal of a notice of Federal tax lien filing.  
18 Bergdale v. Commissioner, T.C. Memo 2014-152.

19 We also note that petitioner's arguments  
20 relative to the original offer <sup>in</sup> and compromise are  
21 misplaced in that he subsequently agreed to the payment of  
22 \$250 a month, which subverts the reasonableness of his  
23 original offer <sup>in</sup> and compromise for a lump sum payment of  
24 only \$100. It's unfortunate in this situation that the  
25 petitioner was taken in by irresponsible representatives

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1 and paid \$3,000 or agreed to pay \$3,000 to seek a  
2 resolution of his tax case, which was too good to be true  
3 in all likelihood.

4 But in any event, he has not established any  
5 basis on which we can accept his argument that the notice  
6 of Federal tax lien should be withdrawn. And the position  
7 of the Internal Revenue Service <sup>as</sup> ~~and~~ filed in the notice of JDC  
8 Federal tax lien, to protect the revenue, was valid and  
9 properly balanced the IRS' need to collect the tax  
10 liability with petitioner's personal situation. He  
11 maintains that the notice of Federal tax lien could affect  
12 his credit, which is probably true. But the fact that he  
13 owes significant Federal taxes requires that the Internal  
14 Revenue Service be permitted to protect their position  
15 with respect to real property, which he admitted at the  
16 hearing he owns.

17 Given our determination, the decision will be  
18 entered for respondent. This concludes the Court's oral  
19 findings of fact and opinion in this case.

20 (Whereupon, at 9:27 a.m., the above-entitled  
21 matter was concluded.)

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