

UNITED STATES TAX COURT
WASHINGTON, DC 20217

RICHARD CONANT GILLER,)
)
 Petitioner,)
)
 v.) Docket No. 4472-18 L.
)
 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 trial in the above case before Judge Michael B. Thornton 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, a decision will be entered for respondent sustaining the proposed collection action.

(Signed) Michael B. Thornton
Judge

Dated: Washington, D.C.
March 15, 2019

SERVED Mar 18 2019

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IN THE UNITED STATES TAX COURT

CLC

In the Matter of:)

RICHARD CONANT GILLER,)

Petitioner,)

v.)

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

Docket No. 4472-18L

Pages: 1 through 12

Place: Los Angeles, California

Date: March 4, 2019



IN THE UNITED STATES TAX COURT

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In the Matter of:)
)
 RICHARD CONANT GILLER,) Docket No. 4472-18L
)
 Petitioner,)
)
 v.)
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

Edward R. Roybal Center & Fed. Bldg.
255 East Temple Street
Room 1167, 11th Floor
Los Angeles, California 90012

March 4, 2019

The above-entitled matter came on for bench opinion,
pursuant to notice at 3:42 p.m.

BEFORE: HONORABLE MICHAEL B. THORNTON
Judge

APPEARANCES:

For the Petitioner:
No Appearance

For the Respondent:
No Appearance



P R O C E E D I N G S

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(3:42 p.m.)

THE CLERK: Recalling from the calendar docket
number 4472-18L, Richard Conant Giller.

(Whereupon, a bench opinion was rendered.)



1 Bench Opinion by Judge Michael B. Thornton

2 March 4, 2019

3 Richard Conant Giller v. Commissioner of Internal Revenue

4 Docket No. 4472-18L

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. Except as otherwise provided by Rule 152(c) of
9 the Tax Court Rules of Practice and Procedure, the oral
10 findings of fact and opinion shall not be relied upon as
11 precedent in any other case.

12 This bench opinion is made pursuant to the
13 authority granted by section 7459(b) and Rule 152.
14 Section references are to the Internal Revenue Code in
15 effect for all applicable times. All rule references are
16 to the Tax Court Rules of Practice and Procedure. All
17 monetary amounts are rounded to the nearest dollar.

18 This case was tried on March 4, 2019, in Los
19 Angeles, California. Petitioner appeared pro se. Ms.
20 Laura J. Mullin appeared on behalf of respondent.

21 Findings of Fact

22 Petitioner has outstanding Federal income tax
23 liabilities for his 2011, 2013, and 2015 tax years. At
24 trial petitioner conceded any issue with respect to
25 respondent's determinations with respect to his 2013 and



1 2015 liabilities, stating that he was disputing only the
2 determination with respect to his 2011 liability.

3 Petitioner failed to file a processable Federal
4 income tax return for 2011. Respondent prepared a
5 substitute for return (SFR) for petitioner pursuant to
6 section 6020(b). On February 9, 2015, respondent mailed a
7 notice of deficiency for 2011 to petitioner's last known
8 address. Petitioner did not file a petition with this
9 Court in response to the notice of deficiency.

10 On May 15, 2017, respondent sent to petitioner a
11 Letter 1058, Notice of Intent to Levy and Your Right to a
12 Hearing, for his 2011, 2013, and 2015 tax years. On June
13 12, 2017, petitioner sent to respondent two Forms 12153,
14 Request for a Collection Due Process or Equivalent
15 Hearing. On each of the Forms 12153, petitioner checked
16 boxes for collection alternatives of "Installment
17 Agreement", "Offer in Compromise", and "I Cannot Pay
18 Balance". Petitioner attached a written statement to both
19 Forms 12153, stating that he disputes the liabilities, the
20 additions to tax, and the interest, and that he "also
21 disagree[s] with and dispute[s] the appropriateness of the
22 proposed collection actions".

23 The Internal Revenue Service (IRS) Office of
24 Appeals sent petitioner letters on June 19, August 16,
25 September 26, October 20, and November 16, 2017. These



1 letters requested that petitioner provide certain
2 information and documents, including the following: (1)
3 specific information and supporting documentation for his
4 various disputes; (2) proof of compliance with estimated
5 tax payments; (3) proof of withholding compliance; (4) a
6 copy of his 2014 tax return; (5) a completed Form 433-A,
7 Collection Information Statement for Businesses, including
8 any necessary supporting documents; (6) a signed copy of
9 his Form 1040, U.S. Individual Income Tax Return, for the
10 2011 year^g; and (7) amended returns for the 2013 and 2015^{ms T}
11 tax years if he disputed the tax shown on his original
12 returns for those years^g. The letters also advised ^{ms T}
13 petitioner that his collections due process (CDP) hearing
14 was assigned to Settlement Officer Brenda R. Catron-
15 Matthews (the SO). Petitioner failed to respond to any of
16 those letters. Petitioner also did not provide any of the
17 requested information and documentation that the SO had
18 requested for purposes of considering collection
19 alternatives.

20 On January 30, 2018, the SO issued a Notice of
21 Determination Concerning Collection Action(s) Under
22 Section 6320 and/or 6330 sustaining the notice of levy for
23 the 2011, 2013, and 2015. Therein the SO determined that
24 all legal and administrative requirements had been met;
25 that petitioner was precluded from challenging the



1 underlying liabilities because he had had prior
2 opportunities to do so; that respondent was unable to
3 consider collection alternatives because petitioner did
4 not provide requested documents and delinquent returns;
5 and that the proposed levy properly balanced the need for
6 efficient collection of taxes with petitioner's concern
7 regarding the intrusiveness of the collection actions.

8 While residing in California, petitioner timely
9 petitioned this Court.

10 After concessions by petitioner, the issues for
11 decision are whether petitioner is liable for the
12 outstanding tax liability from tax year 2011 and whether
13 the SO abused her discretion in refusing to withdraw the
14 Notice of Intent to Levy.

15 Opinion

16 Section 6331(a) authorizes the Secretary to levy
17 upon the property and property rights of a taxpayer who
18 fails to pay a tax within 10 days after notice and demand.
19 Before the Secretary may levy upon the taxpayer's
20 property, the Secretary must notify the taxpayer of the
21 Secretary's intention to make the levy. Sec. 6331(d)(1).
22 The Secretary must also notify the taxpayer of his right
23 to a CDP hearing. Sec. 6330(a)(1). If the taxpayer
24 requests a CDP hearing, the hearing is conducted by
25 Appeals. Sec. 6330(b)(1). At the hearing the taxpayer



1 may raise any relevant issue relating to the unpaid tax or
2 the proposed levy. Sec. 6330(c)(2)(A). Relevant issues
3 include any collection alternatives, challenges to the
4 appropriateness of the collection action, and spousal
5 defense. Id.

6 After the CDP hearing Appeals must determine
7 whether proceeding with the proposed levy is appropriate.
8 In making that determination Appeals is required to
9 consider relevant issues raised by the taxpayer and also
10 whether the proposed levy action appropriately balances
11 the need for efficient collection of taxes with the
12 taxpayer's concerns regarding the intrusiveness of the
13 proposed collection action. Sec. 6330(c)(3). In
14 addition, the Appeals officer must verify that the
15 requirements of any applicable law or administrative
16 procedure have been met. Sec. 6330(c)(1), (3).

17 Once the SO makes a determination, the taxpayer
18 may appeal the determination to this Court. Sec.
19 6330(d)(1). Where the validity of the underlying tax
20 liability is at issue, the Court reviews the determination
21 de novo. Goza v. Commissioner, 114 T.C. 176, 181-182
22 (2000). Where the underlying tax liability is not
23 properly at issue, the Court reviews the determination for
24 abuse of discretion. Id. at 182. The Appeals Office
25 abuses its discretion if it acts "arbitrarily,



1 capriciously, or without sound basis in fact or law."

2 Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

3 When, as here, the IRS prepares a substitute for
4 return pursuant to section 6020(b), the taxpayer may raise
5 his underlying liability in an administrative hearing if
6 he did not receive a notice of deficiency or otherwise
7 have a prior opportunity to contest the liability. See
8 secs. 6320(c), 6330(c)(2)(B); see also Sego v. *MSJ*
9 Commissioner, 114 T.C. 604, 609 (2000). But this Court
10 considers a taxpayer's challenge to his underlying
11 liability in a collection action case only if he properly
12 raised that challenge at his administrative hearing. See
13 Giamelli v. Commissioner, 129 T.C. 107, 115-116 (2007).

14 An issue is not properly raised at the administrative
15 hearing if the taxpayer fails to request consideration of
16 that issue by Appeals or if he requests consideration but
17 fails to present any evidence after being given a
18 reasonable opportunity to do so. Id. *at* 115 *MSJ*

19 In his CDP hearing request petitioner challenged
20 the underlying liability for his 2011 tax year. The SO
21 determined that petitioner had had a prior opportunity to
22 contest his underlying liability because he was sent and
23 received a notice of deficiency and therefore could not
24 contest the underlying liability at the CDP hearing.
25 Petitioner did not comply with the SO's requests for

1 information during the hearing and did not otherwise
2 present the SO with any evidence despite having been given
3 a reasonable opportunity to do so.

4 At trial, petitioner asserted that he did file a
5 Form 1040 for 2011 and that the SFR was invalid as a
6 result. However, the evidence petitioner presented in
7 support of his arguments shows that his Form 1040 was not
8 processed by the IRS, as it lacked his wife's signature.
9 The record also convinces us that, contrary to
10 petitioner's assertion, he did not successfully e-file his
11 2011 return. (The TurboTax materials petitioner offered
12 as proof state in two different places that "You can still
13 file electronically" by taking certain steps. The
14 evidence petitioner has offered does not demonstrate that
15 he ever took those extra steps, and the IRS transcripts
16 that are part of the administrative record do not indicate
17 that any 2011 return was ever filed by petitioner.)

18 In any event, petitioner has not disputed that
19 he received a notice of deficiency regarding his 2011
20 liability. Consequently, petitioner may not challenge the
21 underlying liability as he had a prior opportunity to do
22 so and failed to make specific contentions or to proffer
23 any evidence before the SO.

24 Where the underlying tax liability is not
25 properly at issue, the Court reviews the IRS determination



1 only for abuse of discretion. Goza v. Commissioner, 114
2 T.C. at 182. Thus, in assessing respondent's failure to
3 withdraw the Notice of Intent to Levy, we review for abuse
4 of discretion only. Abuse of discretion exists when a
5 determination is "arbitrary, capricious, or without sound
6 basis in fact or law." See Murphy v. Commissioner, 125
7 T.C. 301, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006).

8 In his petition petitioner suggests that the SO
9 abused her discretion in sustaining the levy. In the
10 notice of determination respondent determined that the
11 levy was appropriate because no collection alternative was
12 agreed upon between petitioner and the SO, and so there
13 was no basis to withdraw the levy. Although petitioner
14 did express interest in collection alternatives on his
15 Forms 12153, the administrative record convinces us that
16 he never actually discussed any collection alternatives
17 with the SO. In fact, the administrative record reflects
18 that petitioner failed to respond to the SO's requests for
19 information. Although petitioner contends that he
20 returned a phone call from the SO, his testimony was so
21 general and lacking in specifics that we regard it as
22 insufficient to show that he ever made a good-faith effort
23 to respond to the SO's numerous requests for information.
24 We conclude and hold that the SO did not abuse her
25 discretion in sustaining the proposed levy on account of

1 petitioner's failure to provide the requested financial
2 information. See Sullivan v. Commissioner, T.C. Memo.
3 2012-337; see also sec. 301.6320-1(e)(1), Proced. & Admin.
4 Regs.

5 Decision will be entered for respondent
6 sustaining the proposed collection action.

7 This concludes the Court's findings of fact and
8 opinion in this case.

9 (Whereupon, at 3:55 p.m., the above-entitled
10 matter was concluded.)

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CERTIFICATE OF TRANSCRIBER AND PROOFREADER

CASE NAME: Richard Conant Giller v. Commissioner

DOCKET NO.: 4472-18L

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 12 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Troy Ray on March 4, 2019 before the United States Tax Court at its session in Los Angeles, CA, in accordance with the applicable provisions of the current verbatim reporting contract of the Court and have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recording.

Carrie Clouse

Carrie Clouse, CDLT-143

3/7/19

Transcriber

Date

Jessica Hernandez

Jessica Hernandez

3/11/19

Proofreader

Date

