

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

R&L HEATING & AIR CONDITIONING INC.,)
)
 Petitioner(s),)
)
 v.) Docket No. 5495-18 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 Elizabeth A. Copeland at New York, New York, containing her 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, we will issue an Order and Decision granting respondent’s Motion for Summary Judgment, sustaining Appeals’ determinations and allowing respondent to proceed with the collection actions upon which this case is based.

(Signed) Elizabeth A. Copeland
Judge

Dated: Washington, D.C.
 March 29, 2019

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IN THE UNITED STATES TAX COURT

DRC

In the Matter of:)
R&L HEATING & AIR CONDITIONING) Docket No. 5495-18L
INC.,)
Petitioner,)
v.)
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.)

Pages: 1 through 10
Place: New York, NY
Date: March 12, 2019



IN THE UNITED STATES TAX COURT

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In the Matter of:)
R&L HEATING & AIR CONDITIONING) Docket No. 5495-18L
INC.,)
Petitioner,)
v.)
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.)

Jacob K. Javits Federal Building
26 Federal Plaza
2nd Floor, Room 206
New York, NY 10278

March 12, 2019

The above-entitled matter came on for bench opinion,
pursuant to notice at 10:00 a.m.

BEFORE: HONORABLE ELIZABETH A. COPELAND
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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(10:00 a.m.)

THE CLERK: Calling docket number 5495-18L, R&L Heating & Air Conditioning Inc.

(Whereupon, a bench opinion was rendered.)



1 Bench Opinion by Judge Elizabeth A. Copeland

2 March 12, 2019

3 R&L Heating & Air Conditioning Inc. v. Commissioner of

4 Internal Revenue

5 Docket No. 5495-18L

6 THE COURT: The Court has decided to render an
7 Oral Opinion in this case, and the following is the
8 Court's oral opinion. Unless otherwise indicated, section
9 references are to the Internal Revenue Code and rule
10 references are to the Tax Court Rules of Practice and
11 Procedure as in effect for the periods at issue in this
12 case. This bench opinion is made under the authority
13 granted by section 7459(b) and Rule 152. Presently before
14 the Court is respondent's motion for summary judgment
15 under Rule 121. The Court ordered petitioner to respond
16 to the motion; and, in his response, he merely alleged
17 that there were factual issues in dispute without
18 providing any specifics. The record reveals there is no
19 genuine dispute of material fact, and the Court may render
20 a decision as a matter of law. We shall do so here.

21 Petitioner refers to R&L Heating & Air
22 Conditioning, Inc., IRS refers to the Internal Revenue
23 Service or respondent, and Appeals refers to the IRS
24 Office of Appeals. Petitioner operated its business in
25 New York when it filed the petition.

Background

1
2 Respondent assessed the tax liabilities for the
3 tax periods ended 3/31/13, 6/30/13, 9/30/13, 12/31/13,
4 3/30/14, 6/30/14, 9/30/14, 3/30/15, 12/31/15, 3/31/2016,
5 12/31/17, and 3/31/17 based solely on petitioner's self-
6 assessed Federal employment tax returns, Forms 941 that it
7 had submitted for these years. On August 11, 2017,
8 respondent issued to petitioner a Letter 1058. Final
9 Notice - Notice of Intent to Levy and Notice of Your Right
10 to a Hearing (the "CDP Levy Notice") for the above
11 outlined periods. On August 17, 2017, respondent issued
12 to petitioner a Letter 3127, Notice of Federal Tax Lien
13 Filing and Your Right to a Hearing Under IRC 6320 (the
14 "CDP Lien Notice") for the taxable period ending March 31,
15 2017, advising petitioner that respondent had filed a
16 Notice of Federal Tax Lien (NFTL) with respect to
17 petitioner's unpaid payroll liability (Form 941) for the
18 taxable period ending 3/31/2017.

19 On September 5, 2017, respondent received a
20 signed ^F form 12153, Request for a Collection Due Process or *fac*
21 Equivalent Hearing (the "CDP request") indicating that
22 "the lien placed on the company created a negative impact
23 on the business to operate [sic] and cause [sic] the loss
24 of business." Petitioner requested interest and penalties
25 abated and suggested he be given time to get a loan to pay

1 the taxes. Petitioner also requested a lien withdrawal.
2 Prior to petitioner's CDP hearing, Appeals requested
3 certain supporting documents ~~from~~^{from} petitioner for the *JAC*
4 purposes of considering any collection alternatives.

5 On February 1, 2018, the Settlement Officer
6 ("S.O.") assigned to the case, Mr. Feinman, received Forms
7 941 for the tax periods ending June 30, 2015, September
8 30, 2015, June 30, 2017, and September 30, 2017. The
9 forms showed additional tax due of more than \$700,000
10 before penalties and interest. In addition, petitioner
11 failed to make any ^Federal tax deposits for these tax *JAC*
12 periods, failed to submit Forms 940, Employer's Annual
13 Federal Unemployment (FUTA) Tax Return, for tax years 2014
14 and 2015, failed to submit the proof of ^Federal tax *JAC*
15 deposits in the then current quarter, failed to provide
16 the specific basis for lien withdrawal, failed to provide
17 the specific basis for the penalty and interest
18 abatements, and failed to submit a proposal for
19 resolution.

20 Appeals held a CDP hearing and subsequently
21 issued a Notice of Determination on February 20, 2018.
22 The Notice of Determination stated that petitioner did not
23 dispute the underlying tax liability and that he failed to
24 provide the requested information necessary for Appeals to
25 consider any collection alternative. As a result, Appeals

1 determined that it could not grant any relief under
2 sections 6330 or 6320.

3 Petitioner filed the instant petition, raising
4 only the following:

5 "We are in the process trying to obtain a loan to pay
6 ^{down} the outstanding tax liabilities[.] [A]ny further *JAC*
7 action will hinder my ability to obtain the loan[.]
8 We asking [sic] that the lien to be [sic] removed so
9 it will be easier getting the loan[.] The penalties
10 and interest assessment imposed on ^{this} ~~the~~ firm very high *JAC*
11 [sic] and would it [sic] to be set aside[.]"

12 Discussion

13 Summary judgment may be granted with respect to
14 all or any part of the legal issues in controversy where
15 the record establishes "that there is no genuine dispute
16 as to any material fact and that a decision may be
17 rendered as a matter of law." Rule 121(a) and (b). As
18 the moving party, respondent bears the burden of proving
19 that there is no genuine dispute of material fact, and
20 factual inferences are viewed in the light most favorable
21 to petitioner as the nonmoving party. Where a motion for
22 summary judgment is made, an adverse party "must set forth
23 specific facts showing that there is a genuine dispute for
24 trial." Rule 121(d). Here, respondent supported the
25 motion with the pleadings and various exhibits.

1 Petitioner supported with a document stating "there are
2 factual issues that are in disputes [sic], therefore the
3 summary judgment motion not [sic] appropriate."

4 Petitioner further stated, "Work was completed [sic] on
5 public buildings by our firm and never been [sic]
6 compensated for this work. This created a hardship for
7 this company causing us to fall behind with the taxes
8 which is no fault of our own." Based on the record, this
9 case is ripe for summary judgment.

10 We review the Commissioner's determinations in a
11 CDP hearing generally for abuse of discretion; except that
12 if the validity of a taxpayer's underlying liability is
13 properly at issue, we review the matter de novo. Giamelli
14 v. Commissioner, 129 T.C. 107, 111(2007).

15 As a threshold matter, we note that petitioner's
16 CDP Levy Notice and CDP Lien Notice were properly issued.
17 This is so because the Commissioner may assess and collect
18 a taxpayer's tax liability that the taxpayer reported on
19 its own return for any year. Meyer v. Commissioner, 97
20 T.C. 555, 560-561(1991). Here, petitioner does not
21 dispute the tax liability underlying his CDP notice, so
22 the standard of review is abuse of discretion.

23 Section 6320 requires the IRS to issue a
24 taxpayer a notice upon the filing of a federal tax lien
25 (NFTL) and grants a taxpayer the right to request a CDP

1 hearing. Section 6330 requires the IRS to issue a
2 taxpayer notice prior to a levy of any property and grants
3 a taxpayer the right to request a CDP hearing. At that
4 hearing, a taxpayer may raise any issue relating to the
5 appropriateness of the proposed collection action,
6 including a request for innocent spouse relief, request
7 for an installment agreement, or the submission of an
8 offer in compromise. In general, a taxpayer may also
9 challenge an underlying tax liability if the taxpayer has
10 had no previous opportunity. Aside from those matters
11 raised by the taxpayer, Appeals may only consider (a)
12 whether the IRS complied with an applicable laws and
13 administrative procedures, and (b) whether any proposed
14 collection action balances the need for the efficient
15 collection of taxes with the legitimate concern of the
16 person that any collection action be no more intrusive
17 than necessary 6630(c)(3). Here, petitioner did not raise
18 any viable collection alternatives and provided no other
19 basis under section 6330 or 6320 on which relief could be
20 granted.

21 The record shows that Appeals did not abuse its
22 discretion when petitioner failed to raise any collection
23 alternatives other than needing time to obtain a loan to
24 pay the taxes. Appeals gave petitioner 30 days to provide
25 necessary documentation and to bring his employment tax

1 deposits current for the first quarter of 2018 so that
2 discussions could ensue. Petitioner failed to do so and
3 provided no evidence of an attempt to secure a loan for
4 payment of taxes.

5 In reaching our decision today, we have
6 considered all arguments raised by the parties. To the
7 extent not discussed herein, we find them to be
8 irrelevant, moot, or without merit. Accordingly, we will
9 issue an Order and Decision granting respondent's motion
10 for summary judgment, sustaining Appeals' determinations,
11 and allowing respondent to proceed with the collection
12 actions that are the subject of this proceeding. This
13 concludes the Court's Oral Findings of Fact and Opinion in
14 this case.

15 (Whereupon, at 10:13 a.m., the above-entitled
16 matter was concluded.)

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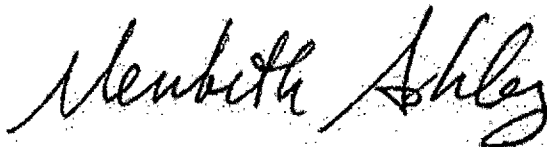
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CERTIFICATE OF TRANSCRIBER AND PROOFREADER

CASE NAME: R&L Heating & Air Conditioning Inc. v.
Commissioner

DOCKET NO.: 5495-18L

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 10 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Adrian Morris on March 12, 2019 before the United States Tax Court at its session in New York, New York 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.



Meribeth Ashley, CET-507 3/14/19
Transcriber Date



Jessica Hernandez 3/14/19
Proofreader Date

