UNITED STATES TAX COURT
WASHINGTON, DC 20217

JOSE LUIS PONCE,	)	
	)	**SYM**
Petitioner,	)	
	)	
v.	)	Docket No. 26509-16 L
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

ORDER AND DECISION

This section 6330(d)[1] case is before the Court on respondent's motion for summary judgment, filed April 26, 2018. By Order dated April 27, 2018, petitioner's response to respondent's motion was made due on or before May 21, 2018. Petitioner has not responded to the motion.[2] That being so, we proceed as though the facts relied upon in support of his motion are not in dispute, and those facts are summarized below.

In a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated November 21, 2016 (notice),[3] respondent determined that a filed lien notice and proposed levy are appropriate collection actions with respect to petitioner's then outstanding 2014 Federal income tax liabilities (underlying liabilities). The underlying liabilities were assessed in due course following the issuance of a notice of deficiency for taxable year 2014. See sec. 6213(c).

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[1] Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourtgov.

[2] As petitioner was advised in the Order, his failure to respond as directed could result in the granting of respondent's motion and entry of decision against him. See Rule 121(d); see, e.g., Lunsford v. Commissioner, 117 T.C. 183, 187 (2001).

[3] A copy of the notice is attached to respondent's answer.

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In his request for an administrative hearing, see sec. 6330(b)(1), petitioner suggested that an installment agreement be considered as an alternative to the proposed collection action. He also advised that he could not pay the underlying liabilities. He did not challenge the existence or the amount of the underlying liabilities at the administrative hearing, and does not do so here. That being so, we review the determination made in the notice for abuse of discretion. See Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). That is, we consider whether the determination was made, "arbitrarily, capriciously, or without sound basis in fact or law". Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

Respondent's settlement officer requested that petitioner support his request for collection alternatives by the submission of certain financial information to the settlement officer. Petitioner supplied the information and the settlement officer calculated a minimum monthly payment of $2,894 by subtracting total allowable expenses from petitioner's monthly gross income. In response, petitioner provided further financial information and the settlement office re-calculated a minimum monthly payment of $2,114. The settlement officer determined that neither of these payments would satisfy the liability within the collection period, but offered petitioner a partial payment installment agreement for $2,100 per month. Petitioner rejected this offer claiming he wanted further reduction based upon two additional car payments. The settlement officer informed petitioner that only one car payment can be considered.

Reasonable collection potential is determined by using local and national standards for basic living expenses, and using the excess of the income over those expenses to satisfy Federal tax debts. Lemann v. Commissioner, T.C. Memo. 2006-37 at slip op. at 17, 18. The settlement officer used local and national standards to calculate petitioner's allowable expenses and found that petitioner had the ability to make a partial payment installment agreement in the amount of $2,100 per month upon his unpaid tax liabilities per application of those local and national standards. Settlement officers may deviate from local and national standards when taxpayers demonstrate with reasonable substantiation and documentation that they would not have adequate means to provide for their basic living expenses. See Marascalco v. Commissioner, T.C. Memo. 2010-130, aff'd, 420 Fed. Appx. 423 (5th Cir. 2011). Petitioner did not demonstrate how the additional vehicle expenses were required as a basic living expense. We hold that the settlement officer here did not abuse his discretion by adhering to local and national standards even if it forces petitioner to change his lifestyle. See Perrin v. Commissioner, T.C. Memo. 2012-22 (citing Speltz v. Commissioner, 124 T.C.

165, 179 (2005), aff'd, 454 F.3d 782 (8th Cir. 2006)); Marks v. Commissioner, T.C. Memo. 2008-226.

In all other respects, respondent's motion shows that respondent has proceeded as required under section 6330, and nothing submitted by petitioner suggests otherwise. That being so, after considering what has been submitted, we are satisfied that there are no genuine issues of material fact in dispute in this case, and that respondent is entitled to decision as a matter of law. See Rule 121. It follows, and is

ORDERED that respondent's motion is granted. It is further

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

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED: **JUL 16 2019**