



aggregated assessed tax for the relevant years and associated accruals of interest were, respectively, \$102,765 and \$76,498.

In February 2014, petitioner entered into an installment agreement with respondent for payment of the amounts owed under which he made monthly payments of \$500. Respondent terminated the agreement in May 2016.

In July 2016, respondent issued to petitioner a Notice of Intent to Levy to collect the outstanding amount owed. Petitioner timely filed a Form 12153, Request for a Collection Due Process or Equivalent Hearing, on which he requested, inter alia, an explanation for the termination of the installment agreement. Petitioner reiterated this request to Settlement Officer (SO) Nathalia Raygosa (assigned to his collection due process (CDP) case) through a phone call and correspondence prior to the hearing. Following the CDP hearing, SO Raygosa issued a Notice of Determination sustaining the proposed levy from which the present case arises.

### Discussion

Under section 6330, an appeals officer conducting a CDP hearing has an obligation to investigate and verify that "the requirements of any applicable law or administrative procedure" were met. See sec. 6330(c)(1); Hoyle v. Commissioner, 131 T.C. 197, 199 (2008). Moreover, Appeals' ultimate determination with respect to a sustaining or rejecting a proposed levy on taxpayer property must, in part, consider this verification. See sec. 6330(c)(3)(A). This Court has found that section 6159 constitutes such applicable law, the requirements of which an appeals officer in a CDP proceeding must verify were satisfied by the IRS prior to sustaining proposed levy action. See Rosenbloom v. Commissioner, T.C. Memo. 2011-140, 2011 WL 2490659, at \*5,\*6, \*9.

Section 6159 authorizes the Internal Revenue Service (IRS) to enter into installment agreements with taxpayers to satisfy, in full or in part, the collection of an outstanding tax liability. The IRS may only terminate an installment agreement for certain enumerated reasons such as a subsequent change in the taxpayer's financial condition or due to a failure of the taxpayer to pay an installment. See sec. 6159(b)(2), (3), (4). More importantly, termination must be preceded by a 30-day notice that provides an explanation for the intended termination to the taxpayer. See sec. 6159(b)(5)(A), (B). Without effectuation of such notice, the IRS may not terminate an installment agreement. See sec. 6159(b)(1). Moreover,

the IRS is precluded from invoking its levy authority upon a taxpayer in the presence of a valid installment agreement. See sec. 6331(k)(2)(C).

In his amended petition, Mr. Means maintains that respondent has not provided him an explanation for the termination of the installment agreement "to this day". Notwithstanding the various and inconsistent explanations for the termination spread throughout the administrative record and in respondent's pleadings,<sup>1</sup> we construe petitioner's argument to mean that he was not afforded proper notice of respondent's intention to terminate his installment agreement as required under section 6159(b)(5).

Because there is no mention in the Notice of Determination of SO Raygosa's verification of section 6159(b)(5)'s requirements being met nor any conclusive indication in the record that respondent provided such notice to petitioner,<sup>2</sup> we hold that SO Raygosa failed to properly verify that "the requirements of any applicable law or administrative procedure" were met as required by section 6330(c)(1). Furthermore, in the absence of such verification, we cannot agree with respondent that SO Raygosa's determination comports with section 6330(c)(3). We therefore conclude that SO Raygosa's determination sustaining the proposed levy was an abuse of discretion.

Under appropriate circumstances, this Court has authority to remand a section 6330 CDP case to Appeals to further investigate and consider taxpayer arguments. See Keene v. Commissioner, 121 T.C. 8, 19 (2003). For the reasons

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<sup>1</sup>In the Attachment to the Notice of Determination issued to petitioner, Respondent states that he did not know why the installment agreement was terminated. SO Raygosa's notes from the hearing states the same. Yet, notes taken by another one of respondent's agents dated July 13, 2016 appear to indicate the termination may have been attributable to petitioner's ex-wife. Respondent's Answer to Mr. Means amended petition responds to his contention that he received no explanation of the termination by alleging that SO Raygosa informed him that it may have been due to a failure of Mr. Means, his ex-wife, or both, to provide the IRS updated financial information.

<sup>2</sup>While we acknowledge the references to "CP523", the form notice used to inform a taxpayer of the IRS's intent to terminate an installment agreement, in the TXMODA transcripts, we are not prepared to conclude on this basis alone that sec. 6159(b)(5) was satisfied.

elaborated upon above, we remand this case to Appeals for a supplemental hearing to investigate whether the requirements of section 6159(b)(5) were met. On remand, if it is determined that respondent did not provide proper notice to petitioner regarding his intent to terminate the installment agreement, petitioner should either be given an opportunity to continue making payments under it to satisfy his unpaid liability for the years in issue or otherwise be provided proper notice of the intended termination, with the right to appeal, pursuant to sections 6159(b)(5) and (e) and the regulations promulgated thereunder.

On the premises stated, it is

ORDERED that the case is remanded to Appeals for a supplemental hearing, at respondent's Appeals Office located closest to petitioner's residence (or at such other place as may be mutually agreed upon) at a reasonable and mutually agreed upon date and time, but no later than November 5, 2019, to determine whether respondent complied with section 6159(b)(5)'s requirement that he provide notice to the taxpayer 30 days prior to terminating an installment agreement and which contains an explanation for the intended termination. It is further

ORDERED that the parties shall, on or before December 5, 2019, submit to the Court joint or separate reports regarding the then present status of this case.

**(Signed) James S. Halpern  
Judge**

Dated: Washington, D.C.  
August 7, 2019