

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

RALPH B. MARRA, )  
)  
Petitioner, ) **ALS**  
)  
v. ) Docket No. 24599-17 L  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent. )

**ORDER**

This section 6330(d)<sup>1</sup> case is before the Court on respondent's motion for summary judgment, filed February 20, 2018, and petitioner's motion to remand, filed March 15, 2018. Each party has objected to the motion of the other. A hearing was conducted on the motions in New York, New York, on December 17, 2018. Counsel for the parties appeared and were heard.

With respect to respondent's motion, we begin, and for all intent and purposes end, by noting the parties' disagreement as to petitioner's entitlement to challenge the existence or the amount of the underlying liability to which the collection action in dispute in this proceeding relates.

According to respondent, petitioner may not here challenge the existence or the amount of the underlying liability because petitioner did not raise the challenge at the administrative hearing. See Giamelli v. Commissioner, 129 T.C. 107, 112-113 (2007). According to petitioner, his challenge to the amount of the underlying liability, or at least a portion of it, was raised at the administrative hearing by the submission of a Form 1127, Application for Extension of Time for Payment of Tax Due to Hardship, to the respondent's settlement officer. We note that a similar challenge is made in the petition.

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<sup>1</sup>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.ustaxcourt.gov](http://www.ustaxcourt.gov).

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The parties disagreement over petitioner's entitlement to challenge the existence or the amount of the underlying liability in this proceeding, not to mention their apparent disagreement over whether petitioner had reasonable cause for his failure to pay the underlying liability, see sec. 6651(a)(2), requires that respondent's motion be denied because genuine issues of material fact remain in dispute, see Rule 121.

Turning our attention to petitioner's motion, we fail to see what could be accomplished by further administrative review and action that could not otherwise be given effect by the parties without a remand. That being so, it is

ORDERED that both motions are denied.

**(Signed) Lewis R. Carluzzo**  
**Special Trial Judge**

Dated: Washington, D.C.  
August 22, 2019