

UNITED STATES TAX COURT
WASHINGTON, DC 20217

TURNER ANSLEY,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 388-18 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER

The Court issued its Opinion in this case (T.C. Memo. 2019-46) on May 1, 2019. On May 13, 2019, petitioner Turner Ansley filed a document that we treated as a timely motion to vacate or revise our decision pursuant to Rule 162.¹

To recap, Mr. Ansley brought this collection due process (CDP) case as a challenge to the IRS Office of Appeals’ determination to uphold a notice of intent to levy relating to his 2012 through 2014 Federal income tax liabilities. In particular he contested the Office of Appeals’ decision to reject his lump-sum \$100 offer-in-compromise (OIC). Seeing no abuse of discretion, we granted summary judgment to respondent, the Commissioner of Internal Revenue. In his motion Mr. Ansley suggests that our decision failed to take into account financial pressures that he currently faces, including increased rent, changes at work that have reduced his take-home pay, and higher costs of living.

¹All section references are to the Internal Revenue Code (Code) in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

The disposition of a Rule 162 motion to vacate or revise a decision rests within the Court's discretion, and such motions will generally be granted only upon a showing of unusual circumstances or substantial error, *e.g.*, mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, or other reasons justifying relief. See Taylor v. Commissioner, T.C. Memo. 2017-212, at *7-*8, *aff'd*, 731 F. App'x 239 (4th Cir. 2018); see also Rule 1(b); Fed. R. Civ. P. 60(b); Brewer v. Commissioner, T.C. Memo. 2005-10, 89 T.C.M. (CCH) 687, 688 (2005).

Mr. Ansley neither seeks to introduce evidence of unusual circumstances nor points to any substantial error relating to the central issue in our case--whether the settlement officer abused her discretion in denying his \$100 OIC in light of her determination that he had assets (primarily cars) worth \$2,974.40 and monthly disposable income of \$2,137. He instead suggests that his financial circumstances have worsened significantly since the IRS issued its notice of determination.

We generally do not consider either (1) issues or arguments that a taxpayer does not raise as part of a CDP hearing or (2) information that the Appeals officer did not have at the time of a CDP hearing. See Giamelli v. Commissioner, 129 T.C. 107, 115 (2007); Magana v. Commissioner, 118 T.C. 488, 493 (2002). We have recognized a limited exception where there has been a material change in a taxpayer's circumstances after the CDP hearing that would justify a remand for reconsideration of his ability to pay. See Gurule v. Commissioner, T.C. Memo. 2015-61, at *35; *cf.* Churchill v. Commissioner, T.C. Memo. 2011-182, 102 T.C.M. (CCH) 116, 118-119 (2011).

Mr. Ansley's motion fails to show a material change that would require a remand (much less the vacatur of our decision). Mr. Ansley implies that a recent increase to his monthly rent (purportedly \$1,240) undermines the settlement officer's assessment of his ability to pay. The settlement officer, however, assumed--in Mr. Ansley's favor--a significantly higher housing and utility amount (\$1,382) than Mr. Ansley now claims. Mr. Ansley also asserts that he no longer qualifies for overtime at his job, but his own representations as to his hourly wage and Social Security income support the conclusion that he would have more than \$400 a month to dedicate to retiring his tax liability, considerably more than his \$100 OIC. Finally, Mr. Ansley complains about inflation and the high cost of living, but such general complaints do not justify a deviation from the national and local standards used to determine allowable expenses. See Walker v. Commissioner, T.C. Memo. 2016-75, at *18. Mr. Ansley has provided no

persuasive substantiation or documentation that demonstrates that he lacks the means to provide for his basic living expenses.

Although we will deny his motion, we remind Mr. Ansley that the Code offers a mechanism to address a material change in circumstances after the Office of Appeals has made its determination. Section 6330(d)(3) grants the Office of Appeals ongoing jurisdiction “with respect to any determination made under this section” and specifies that this jurisdiction encompasses a request for a hearing regarding “a change in circumstances with respect to such person which affects such determination.” Thus, Mr. Ansley is free to submit another OIC to the Office of Appeals if his circumstances legitimately warrant it. See, e.g., Tucker v. Commissioner, 135 T.C. 114, 143 (2010), aff’d, 676 F.3d 1129 (D.C. Cir. 2012).

Upon consideration of the foregoing, it is

ORDERED that Petitioner’s Motion To Vacate or Revise Pursuant to Rule 162, filed May 13, 2019, is denied.

**(Signed) Patrick J. Urda
Judge**

Dated: Washington, D.C.
September 9, 2019