

**UNITED STATES TAX COURT  
WASHINGTON, DC 20217**

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|-----------------------------------|---|-----------------------|
| MERTON GEORGE NELSON & TRUDY      | ) |                       |
| LANAE NELSON,                     | ) | <b>SR</b>             |
|                                   | ) |                       |
| Petitioner(s),                    | ) |                       |
|                                   | ) |                       |
| v.                                | ) | Docket No. 1403-17 L. |
|                                   | ) |                       |
| COMMISSIONER OF INTERNAL REVENUE, | ) |                       |
|                                   | ) |                       |
| Respondent                        | ) |                       |
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**ORDER AND DECISION**

This case is on the September 18, 2017 St. Paul, Minnesota trial calendar. It's based on a notice of determination by the IRS that it would levy the Nelsons' assets to collect unpaid taxes.

The Nelsons were Minnesota residents when they filed their petition. This means that how we decide this summary-judgment motion is dictated by a case called *Robinette v. Commissioner*, 439 F.3d 455 (8th Cir. 2006). This case requires the Tax Court to follow what lawyers call the "record rule." What this means is that the Court has to look at the same things that the IRS looked at during the collection due process hearing (the so-called "administrative record") to decide whether the IRS officer abused his discretion in upholding the levy. An IRS officer abuses his discretion if he makes a decision based on an erroneous view of the law or a clearly erroneous analysis of the facts. *Fargo v. Commissioner*, 447 F.3d 706, 709 (9th Cir. 2006).

The Court reviews the IRS's work in a case like this through summary-judgment motions. The IRS has filed papers in which the IRS lawyer argues that no trial is necessary in this case, because (the IRS says) no relevant facts are in

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dispute -- everything is in the administrative record. The motion argues that, on the basis of these undisputed facts, the Court has to rule in the IRS's favor.

The Court offered the Nelsons a chance to answer the IRS's motion and file one of their own, but a check of the Court's records showed that they never did.

The administrative record that the IRS prepared shows that this dispute arose from the Nelsons' desire for alternatives to forced collection -- alternatives that required them to file their missing 2014 return and show that they were in compliance with the rules requiring estimated tax payments. They never did so and we have repeatedly held that the IRS does not abuse its discretion when it does not consider alternatives to collection for someone who hasn't complied with his filing and estimated-tax obligations for later years. *See, e.g., Rehn v. Commissioner*, T. C. Memo. 2016-54, at \*9-\*11; *Klingenberg v. Commissioner*, T.C. Memo. 2012-292, at \*18; *Starkman v. Commissioner*, T.C. Memo. 2012-236, at \*8-\*9; *see also Orum v. Commissioner*, 412 F.3d 819 (7th Cir. 2012), *aff'g* 123 T.C. 1 (2004).

It is therefore

ORDERED that respondent's May 26, 2017 motion for summary judgment is granted. It is also

ORDERED and DECIDED that respondent may proceed with the collection of petitioner's federal income-tax liabilities for the tax year 2011 as described in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code, dated December 6, 2016.

**(Signed) Mark V. Holmes  
Judge**

ENTERED: **AUG 28 2017**