



Ms. Guzik's case was assigned to a settlement officer. That settlement officer sent Ms. Guzik a letter acknowledging the request for a hearing and setting a telephone conference for November 4, 2015. The letter also informed Ms. Guzik that if she would like to submit an offer in compromise she would need to submit a completed Form 433-A, Collection Information Statement, a copy of her 2014 Form 1040, U.S. Individual Income Tax Return, as well as a Form 656, Offer in Compromise, and related attachments before the telephone conference. At the time she prepared the letter, the settlement officer also reviewed Ms. Guzik's file and determined that she had not had any previous involvement with Ms. Guzik. She also found that there was an open examination of Ms. Guzik's 2011 liability.

During the November 4th call, Ms. Guzik's attorney requested a two-week extension to file the collection information statement and an offer in compromise. Her attorney relayed that Ms. Guzik had been diagnosed with multiple sclerosis, was pregnant, and confined to bed rest. He also indicated that he was aware of the open audit of Ms. Guzik's 2011 return.

The settlement officer agreed to the extension. She also informed Ms. Guzik's representative that the offer in compromise would be "deemed not processable due to the open audit" if the 2011 audit was not closed by the time the offer in compromise was considered. Finally, she noted that Ms. Guzik could also submit an installment agreement proposal.

On November 18, 2015, Ms. Guzik's attorney faxed a copy of her collection information statement to the settlement officer. That day the settlement officer spoke to Ms. Guzik's attorney over the phone. On that call the attorney requested an extension until the end of the month to file an offer in compromise. The settlement officer granted the extension but ultimately did not receive the offer in compromise by the new deadline.

Between November 18, 2015, and December 4, 2015, Ms. Guzik changed representation. On December 4, 2015, Ms. Guzik's new attorney contacted the settlement officer to request an extension to submit an offer in compromise. The settlement officer agreed to another extension.

On December 18, 2015, Ms. Guzik's representative submitted an offer in compromise of \$120,000 to settle her liability. The settlement officer sent the offer in compromise to the Internal Revenue Service's Compliance Office for processing. Because there was an open audit for 2011, the offer was not processed.

While the offer in compromise was under consideration, Ms. Guzik changed representatives for a second time. On a follow up call on October 18, 2016, regarding the rejected offer in compromise, the settlement officer informed Ms. Guzik's new representative that the offer could not be processed, but that she would consider an installment agreement if Ms. Guzik would like to submit a proposal. Ms. Guzik's representative indicated that he would submit an installment agreement. The settlement officer gave him two weeks to submit a proposal.

On November 3, 2016, the day before the proposed installment agreement was due, Ms. Guzik's attorney faxed a letter to the settlement officer. The body of that correspondence is brief enough to reproduce here:

I think that the information previously sent has not changed.  
The financial statement should be the same.

We are in front of the Tax Court for a dispute. The taxpayer is unable to fully pay the tax, but cannot go and get an offer in because of the Tax Court. Do you have a figure in mind for an installment agreement?

The settlement officer left a voice mail for Ms. Guzik's representative on November 8, 2016. According to the settlement officer's records, he did not return that call. The settlement officer also noted that "[p]roposing an [installment agreement] is not my role, it is the taxpayers." She nonetheless took the time to review Ms. Guzik's collection information statement and the rest of Ms. Guzik's file further.

The settlement officer found that Ms. Guzik was not in compliance with her current tax liabilities. She had filed her 2015 income tax return, but the payment that she included with her return "bounced", leaving the liability unpaid. She also had not made estimated payments on her 2016 income tax liability. The settlement officer also took the time to determine whether, based on the information provided, Ms. Guzik might be eligible for an installment agreement. Based on the collection information statement, Ms. Guzik's returns, and the outstanding liability, the settlement officer found that under the six year rule,<sup>2</sup> Ms. Guzik's potential payments "significantly exceed the taxpayers indicated ability to pay."

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<sup>2</sup>Section 5.14.1.4.1 of the Internal Revenue Manual states that taxpayers who do not qualify for other installment agreements may be eligible for an installment

On November 14, 2016, the settlement officer closed the case. A few days later a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code was sent to Ms. Guzik and her representative. The notice of determination states that the return of Ms. Guzik's offer in compromise was sustained because of the ongoing audit for 2011, and that no installment agreement could be considered because Ms. Guzik did not propose a specific installment agreement and because she has not paid her 2015 tax liability or made estimated payments to cover her 2016 tax liability. The notice states that Ms. Guzik reported assets that may need to be liquidated before an installment agreement can be considered. Finally, the notice of determination also states that the settlement officer balanced the "need for efficient collection with [Ms. Guzik's] concern that the collection action be no more intrusive than necessary." While residing in Michigan, Ms. Guzik filed a timely petition for redetermination to the Tax Court disputing each of these points.

The Commissioner filed a motion for summary judgment arguing that the settlement officer did not abuse her discretion and that her determination should be upheld. Ms. Guzik filed a response reiterating the arguments made in the petition. Account transcripts for each quarter of 2010 reflecting Ms. Guzik's 2010 liability from the penalties under section 6672 show that nearly all of the liability has been paid. Ms. Guzik argues that this is a material change in circumstances and because of this change the Court should remand her case back to appeals for further review.

Ms. Guzik did not dispute the material facts: that she had not paid her 2015 income tax liability, that she had not made the necessary estimated payments for 2016, and that she had not made a specific installment agreement proposal.

### Discussion

The issue before this Court is whether we should grant the Commissioner's motion for summary judgment.

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agreement if the taxpayer can "establish[] that he or she can stay current with all paying and filing requirements, the tax liability, including projected accruals, can be fully paid within six years".

## Summary Judgment

Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in controversy. The purpose of summary judgment is to expedite litigation and avoid unnecessary and expensive trials.<sup>3</sup> We may grant summary judgment only if there are no genuine disputes as to any material fact.<sup>4</sup> The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute as to any material fact.<sup>5</sup> In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party.<sup>6</sup> When a motion for summary judgment is made and properly supported, the nonmoving party may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine dispute for trial.<sup>7</sup>

## Judicial Review of Appeals Determinations

In a collection hearing, a taxpayer may raise any issue that is relevant to an unpaid tax or proposed levy, including challenges to the appropriateness of the collection action and offers of collection alternatives.<sup>8</sup> In addition, a taxpayer may challenge the existence or amount of the underlying tax liability if the taxpayer did not have the opportunity to dispute the liability.<sup>9</sup>

When the taxpayer does not properly raise the underlying liability, we review the Commissioner's collection determination for an abuse of discretion.<sup>10</sup>

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<sup>3</sup>Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988).

<sup>4</sup>Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

<sup>5</sup>Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

<sup>6</sup>FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

<sup>7</sup>Rule 121(d).

<sup>8</sup>Sec. 6330(c)(2)(A).

<sup>9</sup>Sec. 6330(c)(2)(B).

<sup>10</sup>Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 181-182 (2000).

The determination by the appeals officer must take three things into consideration: (1) verification that the requirements of the applicable law and administrative procedure have been met, (2) issues raised by the taxpayer, and (3) whether any proposed collection action balances the need for efficient tax collection with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.<sup>11</sup>

We have held that it is not an abuse of discretion when an appeals officer determines that an individual is ineligible for a collection alternative because she is not in compliance with the tax laws.<sup>12</sup> We have also held that an appeals officer does not abuse her discretion in denying a collection alternative when the taxpayer does not propose a specific collection alternative.<sup>13</sup>

The Internal Revenue Manual states under section 5.8.4.17 that, if there is an open examination, an offer in compromise should be returned because “other investigations are pending.” Here, there was an open examination of Ms. Guzik’s 2011 return at the time the offer in compromise was considered. We have previously found that a settlement officer does not abuse her discretion when she follows the Internal Revenue Manual when determining whether a taxpayer is eligible for a particular collection alternative.<sup>14</sup>

Here, the appeals officer did not abuse her discretion. She met the requirements set forth in section 6330. She verified that all administrative and procedural requirements were met before the filing of the notice of intent to levy. She addressed all of the issues raised by the taxpayer including the offer in compromise and a potential installment agreement. She also balanced the need for efficient tax collection with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Finally, we have found that a case may be remanded back to appeals when there is “a material change in a taxpayer’s factual circumstances between the time

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<sup>11</sup>Secs. 6320(c), 6330(c)(3); Lunsford v. Commissioner, 117 T.C. 183, 184 (2001).

<sup>12</sup>Gardner v. Commissioner, T.C. Memo. 2017-107, at \*9; Hull v. Commissioner, T.C. Memo. 2015-86, at \*15.

<sup>13</sup>Kendricks v. Commissioner, 124 T.C. 69, 79 (2005).

<sup>14</sup>W. Zintl Constr., Inc. v. Commissioner, T.C. Memo. 2017-119, at \*8.

of the hearing and the time a case lands on our trial calendar.”<sup>15</sup> We do not find that this case is appropriate for remand. Between the time of the hearing, and the time of the appeal, much of the liability from the trust fund recovery penalties under section 6672 was repaid. In the past we have held that a case can be remanded if a taxpayer’s ability to repay has diminished since the time of the hearing.<sup>16</sup> In cases where a taxpayer’s ability to repay the liability has increased, we have not remanded the case to appeals.<sup>17</sup> Here the lower outstanding liability means the Mr. Guzik has an increased ability to meet her tax liability. As such we will not remand this case back to appeals.

Ms. Guzik had three different attorneys during the 14 or so months that the settlement officer conducted her hearing. At nearly every stage her attorneys requested extensions of time to complete necessary paperwork. Each time the settlement officer granted reasonable extensions. Even with all of those extensions, Ms. Guzik did not submit an installment agreement proposal. The settlement officer cannot be forced to propose a collection alternative for a taxpayer who refuses to do so. Accordingly, it is

ORDERED that respondent’s motion for summary judgment, filed January 18, 2018, as amended February 26, 2018, is granted. It is further

ORDERED and DECIDED that respondent’s determination as set forth in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated November 18, 2018, is sustained.

**(Signed) Ronald L. Buch  
Judge**

Entered: **MAR 13 2018**

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<sup>15</sup>Churchill v. Commissioner, T.C. Memo. 2011-182, 102 T.C.M. (CCH) 116, 119 (2011).

<sup>16</sup>See Churchill v. Commissioner, 102 T.C.M. at 119.

<sup>17</sup>See Bero v. Commissioner, T.C. Memo 2017-235, at \*18-19 ; Kehoe v. Commissioner, T.C. Memo 2013-63, at \*15-16.