



What to do When the Auditor is Bats%\$t Crazy?

December 29, 2020

Eric L. Green, Esq.

Green & Sklarz LLC

Ph. (203) 285-8545

egreen@gs-lawfirm.com

<https://TaxRepLLC.com/>



Eric L. Green

My name is Eric Green. After 20 years as a Tax Attorney and 14 years teaching and writing about tax representation, I saw the need to help CPAs and EAs learn this area.

The demand is huge – my law practice has exploded to 22 employees focusing on tax resolution. I started a program for tax professionals like you because you are uniquely qualified and accredited to do this work. And having worked several tax seasons myself at the beginning of my career, I now know there is a better way of life!

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Learn How with Tax Rep Network

"Eric, I took your advice and started my IRS representation practice after the course. Without any further advertising other than adding "IRS Representation Practice" to my sign, I added an immediate \$18,000 to my billings on just a few client matters. Marketing to my own clients added more than \$140,000 in income by the end of the first year! The workshop is straightforward and easy to follow, my only regret being that I did not do this sooner. Thank you!" - *Anthony Delucia*

"The representation side of my practice has just exploded thanks to Eric. I have added staff and now focus my business on much more lucrative representation matters. There is no way this would have happened without his expertise..." - *Dawn B.*

"I just wanted to say thank you for today's webinar. I have been doing taxes for 19 years and this was by far the best training that I have ever attended, and I attend a lot." - *Stan F.*

Find Out More: Taxrepllc.com



203-285-8545 | support@taxrepllc.com

The Tax Rep Network Team



Eric L. Green
Instructor & Coach



Jeffrey Sklarz
Instructor & Coach



Amanda Evans
Coach



Sandi Leyva
Marketing Instructor

WHAT YOU GET



Two Books



Video Training Library



IRS Representation Conference



Checklists and Downloads



The 100K Challenge



Marketing Support



Advanced Training



Discussion Forum



Software Discounts



Case Studies



Q&A

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Testimonials

"Eric has done a great job outlining the steps needed to help resolve a taxpayer's IRS debt. His use of practical examples, exhibits, and clear explanations is very valuable. This book is helpful for those with little experience with the IRS collection process as well as a good review for those more experienced in IRS collection matters." -Terry D., EA

"Eric Green has offered a superb resource for CPAs! This book takes you by the hand and guides you step by step through the intricacies of the IRS Collection process. Eric draws on his real-life experience with clients and shares these stories for the benefit of the reader. The exhibits are super thorough. I find it very easy to follow and loved the practice tips. Keep it on your desk!" -Allie P., ESQ

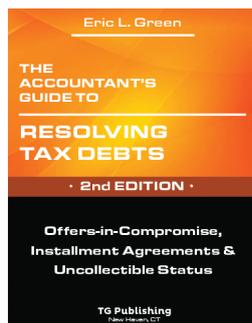
"WOW!! Eric Green's The Accountants Guide to IRS Collection covers every aspect of the Federal Collection Process. The book is filled with a HOT TIPS and is a step by step guide to various approaches the resolving your clients collection issues. A must have book in every practitioners office." -Ray L., EA

The Accountant's Guide to IRS Collection: A Step-by-Step Guide to Resolving Your Client's Tax Debt



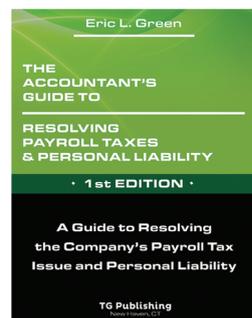
If you've been thinking about expanding your tax practice to serve clients that are behind in filing or payments or both, then this is perfect guide. You'll learn the procedures you need to know so you can add this lucrative, in-demand service to your tax practice.

The Accountant's Guide to Resolving Tax Debts: Offers-in-Compromise, Installment Agreements, and Uncollectible Status



More than 14 million people owe the IRS money, and many of them need the help of a tax resolution professional. This guide steps you through the procedures you need to know to help tax clients who have debt with the IRS.

The Accountant's Guide to Resolving Payroll Taxes & Personal Liability: A Guide to Resolving the Company's Payroll Tax Issue and Personal Liability



Unpaid payroll taxes are the number one reason why small businesses get into tax trouble. Complete with procedures, forms, case studies and checklists, this guide has everything you need to help clients navigate payroll tax debt with the IRS.

Find Out More: TGPublish.com

203-285-8545 | info@tgpublish.com

Testimonials

"The representation side of my practice has just exploded thanks to Eric. I have added staff and now focus my business on much more lucrative representation matters. There is no way this would have happened without his expertise..." - Dawn B.

"My tax practice has grown because of Tax Rep Network. It gave me an opportunity to understand the client more. It gave best case and worst case scenarios, which is always great. At least I knew what to do and how to make the best decision for the client. So yes, it has helped tremendously." -Amber P.

"I joined Tax Rep, LLC because I realized I needed a revenue stream outside of tax season. When my first tax season ended, I was thinking, 'Wow, I'm not going to have as much revenue.' I got trained as a tax resolution specialist, and I've been able to really grow my practice and help clients. I've probably increased my revenue by \$150,000. I'm a solo practitioner, so it's not as big as maybe some others, but without Tax Rep, LLC and Eric Green's help, none of that would've been possible." -Patrick W.

Eric L. Green



Attorney Eric L. Green is a practicing tax attorney, author, speaker, and coach. He founded Tax Rep LLC which runs the popular tax representation practice-growth training and coaching program Tax Rep Network. Through his role as the primary instructor and coach at Tax Rep Network, he has helped hundreds of accountants start and grow successful tax representation practices.

Eric is a partner and founder of law firm Green & Sklarz LLP, which is based in New Haven, Connecticut, where his focus is taxpayer representation before the IRS, Department of Justice Tax Division and state departments of revenue. Prior to becoming an attorney, Eric served as a senior tax consultant for national and international accounting firms, including KPMG and Deloitte & Touche.

Eric developed a national reputation by building a remarkable record of negotiating favorable settlements in thousands of civil cases against government agencies and has also been able to convince government agents and attorneys to forgo criminal charges and civilly resolve many cases.

Eric is a Fellow of the American College of Tax Counsel, an organization in which membership is an honor reserved for those at the top of their chosen profession. The College's members, called "Fellows," are recognized for their extraordinary accomplishments and professional achievements and for their dedication to improving the practice of tax law. Fellows must be nominated by their peers for this honor.

Eric is a frequent lecturer at American Bar Association Tax Section conferences, accounting conferences, and state Enrolled Agent conferences. He served as adjunct faculty at the University of Connecticut School of Law where he taught law students to handle taxpayer representation matters in the low income taxpayer clinic. He is often quoted in the Wall Street Journal, USA Today, CreditCard.com and Consumer Reports Financial News.

Eric is the author of the Accountant's Guide to IRS Collection, the Accountant's Guide to Resolving Tax Debts, a contributing author on Advocating for Low Income Taxpayers: A Clinical Studies Casebook and was interviewed for the book Stop Hiding from the IRS: The Insider's Guide to Solving Your Tax Debts Once and For All.

Attorney Green received his Bachelor of Business Administration degree in Accounting with a minor in International Business from Hofstra University and is an honors graduate from New England School of Law. He earned a Masters of Laws in Taxation from Boston University School of Law.

Find Out More: TGPublish.com

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Eric developed a national reputation by building a remarkable record of negotiating favorable settlements in thousands of civil cases against government agencies and has also been able to convince government agents and attorneys to forgo criminal charges and civilly resolve many cases. He is the author of the Accountant's Guide to IRS Collection, the Accountant's Guide to Resolving Tax Debts, and The Accountant's Guide to Resolving Payroll Taxes & Personal Liability.



TaxRepLLC.com/CTRC

203-285-8545 | support@taxrep LLC.com

What to do When the Auditor is Batshit Crazy?

Celebrating 2020

Eric L. Green, Esq.



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Eric Green, Esq.

- ▶ Managing partner in Green & Sklarz LLC, a boutique tax firm with offices in Connecticut and New York.
- ▶ Focus is civil and criminal taxpayer representation before the Department of Justice Tax Division, Internal Revenue Service and state Departments of Revenue Services.
- ▶ Has served as a columnist for CCH's Journal of Practice & Procedure.
- ▶ Attorney Green is the past Chair of the Executive Committee of the Connecticut Bar Association's Tax Section.
- ▶ Eric is a Fellow of the American College of Tax Counsel ("ACTC").
- ▶ Founder of Tax Net Network



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Eric Green, Esq.



Instagram

IRS REPRESENTATION
Conference



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Follow us on Instagram...Ericl.green



- ▶ Follow me on Instagram and like the posts
- ▶ Giving away swag to our followers: mugs, T-Shirts, Lands End Sweaters and Yeti Travel Mugs
- ▶ Free! Post discount codes for our programs
- ▶ Follow me at <https://www.instagram.com/ericl.green/>



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CPE

- ▶ There will be 8 attendance check words
- ▶ Please write these down
- ▶ You will need them at the end when you click on the link and claim your ce/cpe certificate

Schedule

- ▶ Stick to our schedule
- ▶ 10 minute break near the top of the hour
- ▶ Go to the restroom and refill your coffee (or drink of choice)





QUICK BREAK

We will resume the program in a moment.

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Agenda



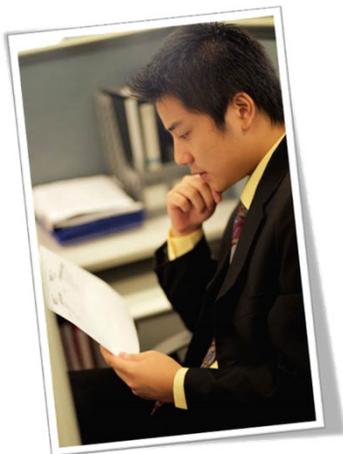
- ▶ So what can go wrong?
- ▶ Issues at Exam
- ▶ Issues at Appeals
- ▶ Issues with Collection
- ▶ Going Nuclear

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Exam

- ▶ How do you handle the exam?
- ▶ First, calm the client down and explain the process
- ▶ Second, be prepared – you can represent them but you must be able to do so
- ▶ Third, review everything, not just the 2 items they asked for
- ▶ Because, what is the purpose of the audit?

Example...



- ▶ What is the purpose of an audit?
- ▶ It is NOT to punish taxpayers for making a mistake.
- ▶ It IS to help taxpayers comply with the law and to determine a taxpayer's correct tax liability.
- ▶ You will meet auditors that do not understand this

Examples of Auditor Abuse

- ▶ The son who didn't really work
- ▶ The summons
- ▶ "It seems we may have a preparer penalty issue here..."



Now what?

- ▶ Do not panic
- ▶ Respond in writing (they cannot pretend it did not happen)
- ▶ Elevate it to the supervisor
- ▶ Elevate it to the territory manager
- ▶ Elevate it to the executive level

Consent to Extend

- ▶ Sign? Only if things are going well, otherwise...
- ▶ Refuse
 - a. refuse if it is not in your client's best interest
 - b. ALWAYS refuse if there is any indication of fraud
- ▶ The IRS will deny the deductions
- ▶ Issue the 90-Day Notice of Deficiency

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Notice of Deficiency

	Department of the Treasury Internal Revenue Service Small Business and Self-Employed		Date: OCT 26 2016
	955 South Springfield Avenue Springfield NJ 07081		Taxpayer ID number:
CERTIFIED MAIL			Form: 1040
CLIENT NAME			Person to contact:
CLIENT ADDRESS			Contact telephone number:
CITY, STATE ZIP			Contact fax number:
			Employee ID number:
			Last day to file petition with US tax court: JAN 24 2017
Tax Year Ended:	December 31, 2014	December 31, 2015	
Deficiency:			
Increase in tax	\$18,617.00	\$10,394.00	
Penalties or Additions to Tax			
IRC 6662(a)	3,723.40	2,078.80	

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Case Lands in Appeals

- ▶ Government will answer (not very enlightening)
- ▶ Case will be shipped to appeals
- ▶ Appeals might get pissed and dump it back on audit (AJAC)
- ▶ Preparation is very similar to an audit
- ▶ Documentation should be prepared
- ▶ Any arguments you have should be presented (need to build the record)

Government Response

ORIGINAL

UNITED STATES TAX COURT

TAXPAYER NAMES,)	
)	
Petitioners,)	
)	
v.)	Docket No. 20018-XX
)	
COMMISSIONER OF INTERNAL REVENUE,)	Filed Electronically
)	
Respondent.)	

ANSWER

RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1. Admits.
2. Admits that petitioners' last known address to the IRS at the time of the mailing of the notice of deficiency was XX _____ Avenue, _____, NY 10XXX-XXXX, otherwise denies for lack of knowledge.
3. Admits.
4. Denies for lack of knowledge.
5. Denies for lack of knowledge.

Assigned to Appeals

Internal Revenue Service
Appeals Office
CT-RI Appeals Office
333 East River Dr., Suite 200
East Hartford, CT 06108

Date: July 31, 2017

ERIC L. GREEN
GREEN & SKLARZ, LLC
700 STATE STREET, SUITE 100
NEW HAVEN, CT 06511

Department of the Treasury

Person to Contact:
APPEALS OFFICER NAME
Employee ID Number: 100100xxx
Tel: 860-290-4xxx
Fax: 860-290-4xxx
Contact Hours: 8am to 4pm, EST

Refer Reply to:
AP:EX:CT-RI:XXX

In Re:
TAXPAYER NAMES
SSN/EIN Number:
XXX-XX-XXXX
Tax Periods Ended:
12/2014 and 12/2015

Dear Mr. Green:

I am an Appeals Officer with the Internal Revenue Service and have been assigned responsibility for reviewing your above-referenced client's objections following an examination of their 2014 and 2015 F1040's. My role here is to provide you and your clients with an impartial and independent review of the matter.

I am writing you today to advise that I received your fax dated July 31, 2017. I contacted your office and we are now scheduled to have a conference on this matter via phone on Tuesday, August 15, 2017 at 2pm. Please contact me at that time and I, in turn, will have endeavored to have left my line free to receive your call. If you would like to meet with me here at our offices in East Hartford, please contact me by phone so I may reserve a conference room for us to use.

I received your F2848's on this matter and have forwarded them to our processing department.



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AJAC Letter



Department of the Treasury
Internal Revenue Service
Appeals Office
150 Court Street
Suite 105
Charleston, WV 25301

ERIC L. GREEN
700 STATE STREET SUITE 100
NEW HAVEN, CT 06511

Date:
April 3, 2018
Person to contact:
Name: APPEALS OFFICER
Employee number: 100077XXXX
Telephone: XXX-XXX-XXXX
Fax: XXX-XXX-XXXX
Contact hours: 8:00 a.m.-4:45 p.m.

Re:
CLIENT NAMES

Tax period(s) ended:
12/2014 12/2015
Docket number:
20018-17

Dear Mr. Green:

The Office of Appeals received your docketed United States Tax Court case for consideration. You provided new information to Appeals, not previously considered. We are returning your case file to the Compliance function to examine the new information and provide a preliminary determination. The Compliance examiner will analyze the new information, make recommendations for any changes to the proposed increase to tax, and return your case file to Appeals. Appeals will retain jurisdiction and settlement authority of your case during this process.

Please be advised that this process will be completed in compliance with the ex parte restrictions set forth in section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998. According to the ex parte requirements, you will be invited to participate in any substantive discussion of the disputed issues in your case between the two divisions (Compliance and Appeals).

Once the examiner completes their examination of the new information, your case file will be returned to Appeals. The Appeals Officer assigned to your case will take the examiner's recommendations into consideration, but Appeals is not bound to adhere to the examiner's conclusions.



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Qualified Offer (Appeals/US Tax Court Only)

- ▶ If you are having issues with Appeals, consider a Qualified Offer
- ▶ IRC § 7430 allows the prevailing party in litigation to recover costs from the IRS
- ▶ Net worth limitations
- ▶ Issue is often who prevailed?

An Offer They Cannot Refuse

- ▶ IRC § 7430 Qualified Offer
- ▶ Anytime from Appeals until 30 days before trial
- ▶ Sets the bar for who is the prevailing party
- ▶ Obtain costs from the IRS
- ▶ Legal fees (capped at \$200 an hour)
- ▶ Help settle your case!
- ▶ IRS Counsel will review – IRM 35.10.1

Qualified Offer

Dear Mr. _____:

This is a Qualified Offer made pursuant to I.R.C. Sec. 7430(g). The taxpayer offers to settle for \$_____.00 the proposed responsibility for her 2015 federal income tax return. This Offer shall remain open until the earliest of the date such offer is rejected, the date trial begins, or the 90th day hereafter in accordance with Treas. Reg. Sec. 301.7430-7.

Thank you.



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Qualified Offers

- ▶ Will not force a settlement on the IRS, but...
- ▶ It will force the IRS to really consider their position and your arguments
- ▶ Ups the ante for the IRS
- ▶ Can help bring the case to a quick resolution



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IRS Collection



- ▶ Revenue Officers tend to be aggressive when it comes to collection
- ▶ Can sometimes get over aggressive
- ▶ As if they believe we are hiding money on them

Stupid stuff RO's said in the last 60 days to us

- ▶ "They have to sell their house" - Bill
- ▶ "I don't care about the 433-A" - Peter
- ▶ "We are not going to allow the sale of the house to go forward" – Kim
- ▶ "I will levy them anyway" – unknown because from a tax rep member
- ▶ "Ill go talk to their neighbors" - Kim

Most Famous Case of Redemption...



MOGULS > POWER PLAYERS

Steve Wynn acquires the Bel Air home of Joe Francis

By James McClain • February 25, 2019



For over a decade, "Girls Gone Wild" creator Joe Francis and Las Vegas casino tycoon Steve Wynn have been locked in a bitter series of lawsuits

IRS Says Sorry, no you don't Steve Wynn

Internal Revenue Service	Department of the Treasury
Date:	Property Location (purchased at foreclosure sale):
	Foreclosure Sale Date:
	Contact Person:
	Contact Person's Telephone Number:
	Contact Person's Address:

Dear

We have received information that you purchased the property identified above at a foreclosure sale. The Internal Revenue Service has the right to redeem this property from you because the property is subject to a federal tax lien junior to the foreclosing lien.

We are considering redeeming this property and have until _____ to take action. We may release our right to redemption if you pay an amount determined to be equal to our redemption right. We have enclosed Publication 487, How to Prepare Application to Release Property Secured by Federal Tax Lien, which describes how to apply for a release. If the right of redemption is determined to be without value, you will not be required to pay to obtain a release.

HOME / MOGULS

Joe Francis' Seized Bel Air Mansion Sells to Billionaire Neighbor

By James McClain October 3, 2019 4:58 pm PT



Seller United States Marshals
Location Bel Air, Los Angeles, Calif.

[VIEW MORE](#)

Following the bizarre legal hijinks that surround embattled "Girls Gone Wild" honcho Joe Francis is somewhat akin to deciphering the plot of "The Big Sleep." It just goes, and goes, and goes on some more. And those who stick it out to the end typically find themselves more confused than those who don't.

Back near the dawn of time — November 2002, to be precise — a 29-year-old Francis laid out \$5.45 million for a 6,000+ sq. ft. modern mansion in Bel Air. From there, things quickly took a turn for the messy.

In 2004, an intruder broke into the house and forced Francis to do degrading things on video before abducting him, abandoning him in the trunk of his own Bentley and later attempting to blackmail him. The perpetrator was soon brought to justice courtesy of Paris Hilton, naturally.



Taxpayer Bill of Rights

- ▶ Omnibus Taxpayer Bill of Rights (Original “Publication 1” – 1988)
- ▶ Taxpayer Bill of Rights 2 (1996)
- ▶ Taxpayer Bill of Rights 3 (1998)
- ▶ Taxpayer Bill of Rights 4 (2014)

2014 Taxpayer Bill of Rights

Right to be informed

Right to finality

Right to quality service

Right to privacy

Right to pay no more than
the correct amount of tax

Right to confidentiality

Right to challenge the IRS'
position and be heard

Right to representation

Right to appeal IRS decision
in an independent forum

Right to a fair and just tax
system

Bill of Rights

Make sure you cite this in your response:

- ▶ Right to quality service
- ▶ Right to confidentiality
- ▶ Right to a fair and just tax system

Complaining ...

- ▶ I do not like to complain ... however
- ▶ I would talk to the person I am dealing with first
- ▶ If that fails to get a change, I would talk to the group manager – let them clean up their own house (believer in win/win)
- ▶ If its going to be win/lose, my clients don't pay me to lose!

The path...

- ▶ Respond in writing
- ▶ Elevate to the group manager
- ▶ Depending upon the issue (the 433-A, the tax lien) file your CAP appeal
- ▶ Elevate to the territory manager

Critical moves

- ▶ If the liability is an issue, file a DATL
- ▶ If they are CNC – remember IRC § 6343 and *Vinateiri v. Commissioner*, 133 T.C. No. 16 (12/21/2009)
- ▶ File a 911 with the Taxpayer Advocate
- ▶ If you can argue it qualifies, file a DATC (argue for actual, resolve with allowable, an IA is a possibility)
- ▶ Sue them
- ▶ Bankruptcy – daycare story

CAP Form

Department of the Treasury - Internal Revenue Service			
Form 9423 (February 2020)			
Collection Appeal Request (Instructions are on the reverse side of this form)			
1. Taxpayer's name		2. Representative (attach a copy of Form 2848, Power of Attorney)	
3. SSN/EIN	4. Taxpayer's business phone	5. Taxpayer's home phone	6. Representative's phone
7. Taxpayer's street address			
8. City		9. State	10. ZIP code
11. Type of tax (tax form)	12. Tax periods being appealed	13. Tax due	
Collection Action(s) Appealed			
14. Check the Collection action(s) you are appealing			
<input type="checkbox"/> Federal Tax Lien	<input type="checkbox"/> Levy or Proposed Levy	<input type="checkbox"/> Seizure	
<input type="checkbox"/> Rejection of Installment Agreement	<input type="checkbox"/> Termination of Installment Agreement	<input type="checkbox"/> Modification of Installment Agreement	
Explanation			
15. Explain why you disagree with the collection action(s) you checked above and explain how you would resolve your tax problem. Attach additional pages if needed. Attach copies of any documents that you think will support your position. Generally, the Internal Revenue Service Independent Office of Appeals will ask the Collection Function to review, verify and provide their opinion on any new information you submit. We will share their comments with you and give you the opportunity to respond			



Under penalties of perjury, I declare that I have examined this request and any accompanying documents, and to the best of my knowledge and belief, they are true, correct and complete. A submission by a representative, other than the taxpayer, is based on all information of which the representative has any knowledge.

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IRC § 6343

(a) RELEASE OF LEVY AND NOTICE OF RELEASE

(1) IN GENERAL Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—

(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) release of such levy will facilitate the collection of such liability,

(C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise,

(D) the Secretary has determined that **such levy is creating an economic hardship due to the financial condition of the taxpayer**, or



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IRC § 7433

Civil damages for unauthorized collection actions

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

Treasury Inspector General for Tax Administration (TIGTA)

- ▶ Handles complaints against IRS Employees (government practitioners)
- ▶ TIGTA's audits, investigations, and inspections and evaluations protect and promote the fair administration of the Federal tax system and work to ensure that the Internal Revenue Service (IRS) is accountable for the trillions of dollars in tax revenue it collects each year

Treasury Inspector General for Tax Administration (TIGTA)

- ▶ Call toll free – 1-800-366-4484
- ▶ By Fax – (202) 927-7018
- ▶ By Mail –
 - ❑ Treasury Inspector General for Tax Administration Hotline
P.O. Box 589
Ben Franklin Station
Washington, DC 20044-0589



Going Nuclear

- ▶ I would file compliant with:
 - ❑ Taxpayer Advocate Service
 - ❑ TIGTA
 - ❑ Senate Finance Committee
 - Mere fact of observation changes behavior
 - ❑ Congressional Constituent Services

Follow us on Instagram....Ericl.green



- ▶ Started on 12/22 – 12/31
- ▶ Daily Top 10 Biggest Mistakes Made When Dealing with the IRS
- ▶ Giving away swag to our followers: mugs, T-Shirts, Lands End Sweaters and Yeti Travel Mugs
- ▶ Free! Post discount codes for our programs
- ▶ Follow me at <https://www.instagram.com/ericl.green/>



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- ▶ **Limited to 100 attendees!**
- ▶ <https://taxrepllc.com/program-20210107-case-study/>

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Thursday, January 7, 2021 | 10am – 6:30pm Eastern | via Live Webinar

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- ▶ Get access to our forms
- ▶ Get access to our marketing and our live marketing training webinars
- ▶ Get access to our live Q&A



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- ▶ No contract!



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Questions?

Eric L. Green, Esq
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New Haven, CT 06511
Ph. 203.285.8545
egreen@GS-Lawfirm.com
www.GS-Lawfirm.com



Instagram



**US TAX COURT
RECEIVED**

**NOV 13 2017
10:37 AM**



**US TAX COURT
eFILED**

NOV 13 2017

TAXPAY ER'S NAMES,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

ELECTRONICALLY FILED

Docket No. 20018-XX

RESPONDENT'S ANSWER

SERVED Nov 13 2017

ORIGINAL

UNITED STATES TAX COURT

TAXPAYER NAMES,)
)
Petitioners,)
)
v.) Docket No. 20018-XX
)
COMMISSIONER OF INTERNAL REVENUE,) Filed Electronically
)
Respondent.)

ANSWER

RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1. Admits.
2. Admits that petitioners' last known address to the IRS at the time of the mailing of the notice of deficiency was XX _____ Avenue, _____, NY 10XXX-XXXX, otherwise denies for lack of knowledge.
3. Admits.
4. Denies for lack of knowledge.
5. Denies for lack of knowledge.
6. Denies, alleges that petitioners' 2014 and 2015 income tax returns were filed at the IRS service center in Andover, MA.
7. Admits that petitioners were notified by the IRS they were under examination, otherwise, denies for lack of knowledge.
8. First sentence. Admits that the records provided by petitioners were not sufficient to change the proposed

adjustments shown in the notice of deficiency, otherwise, denies for lack of knowledge. Second sentence. Denies.

9. Denies for lack of knowledge, alleges that petitioners case will be considered by Appeals in the future.

10. Admits that a notice of deficiency was issued to petitioners that forms the basis of this case, otherwise, denies for lack of knowledge.

11. As petitioners realleges paragraphs 1. through 10. in paragraph 11., respondent restates its responses to those paragraphs here.

12. Admits that the deficiency in dispute for 2014 is \$181,770.00, and alleges there is an addition to tax proposed of \$41,785.25 pursuant to I.R.C. § 6651(a)(1), and alleges there is a penalty proposed of \$36,354.00 pursuant to I.R.C. § 6662(a), denies the Court has jurisdiction over the proposed interest, otherwise, denies for lack of knowledge.

13. Admits that petitioners are disputing certain proposed adjustments to the 2014 tax year.

a. through r., inclusive. Admits that petitioners are disputing the proposed adjustments, otherwise, denies for lack of knowledge.

14. Admits that respondent did not accept petitioners position with regard to the proposed adjustments, denies

respondent did not review petitioners' supporting documentation for 2014, otherwise denies for lack of knowledge.

15. Denies.

16. Denies.

17. As petitioners realleges paragraphs 1. through 10. in paragraph 17., respondent restates its responses to those paragraphs here.

18. Admits that petitioners are disputing certain proposed adjustments to the 2015 tax year.

a. through q., inclusive. Admits that petitioners are disputing the proposed adjustments, otherwise, denies for lack of knowledge.

19. Admits that respondent did not accept petitioners position with regard to the proposed adjustments, denies respondent did not review petitioners' supporting documentation for 2015, otherwise denies for lack of knowledge.

20. Denies.

21. Denies.

22. As petitioners realleges paragraphs 1. through 10. in paragraph 22., respondent restates its responses to those paragraphs here.

23. Denies any penalties have been imposed, alleges that for 2014 there is an addition to tax proposed of \$41,785.25

pursuant to I.R.C. § 6651(a)(1), and alleges there is a penalty proposed of \$36,354.00 pursuant to I.R.C. § 6662(a).

24. Denies any penalties have been imposed, alleges that for 2015 there is a penalty proposed of \$35,997.00 pursuant to I.R.C. § 6662(a).

25. Denies.

26. Denies.

27. Denies.

28. Denies generally each and every allegation of the petition not herein specifically admitted, qualified or denied.

WHEREFORE, it is prayed:

(1) That the relief sought in the petition be denied;

(2) That respondent's determination, as set forth in the notice of deficiency, be in all respects approved;

(3) That the Court determine that:

(a) Petitioners are not entitled to fees and costs;

(b) Petitioners' prayer for fees and costs is premature, since petitioners have not established the status of a prevailing party as required by I.R.C. § 7430;

(c) Petitioners' prayer for fees and costs is improper under Tax Court Rule 34.

WILLIAM M. PAUL
Acting Chief Counsel
Internal Revenue Service

Date: NOV 13 2017

By: 

WILLIAM C. BOGARDUS
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(Small Business/Self-Employed)

Internal Revenue Service

Appeals Office
CT-RI Appeals Office
333 East River Dr., Suite 200
East Hartford, CT 06108

Date: July 31, 2017

ERIC L. GREEN
GREEN & SKLARZ, LLC
700 STATE STREET, SUITE 100
NEW HAVEN, CT 06511

Department of the Treasury**Person to Contact:**

APPEALS OFFICER NAME
Employee ID Number: 100100xxx
Tel: 860-290-4xxx
Fax: 860-290-4xxx
Contact Hours: 8am to 4pm, EST

Refer Reply to:

AP:EX:CT-RI:XXX

In Re:

TAXPAYER NAMES

SSN/EIN Number:

XXX-XX-XXXX

Tax Periods Ended:

12/2014 and 12/2015

Dear Mr. Green:

I am an Appeals Officer with the Internal Revenue Service and have been assigned responsibility for reviewing your above-referenced client's objections following an examination of their 2014 and 2015 F1040's. My role here is to provide you and your clients with an impartial and independent review of the matter.

I am writing you today to advise that I received your fax dated July 31, 2017. I contacted your office and we are now scheduled to have a conference on this matter via phone on Tuesday, August 15, 2017 at 2pm. Please contact me at that time and I, in turn, will have endeavored to have left my line free to receive your call. If you would like to meet with me here at our offices in East Hartford, please contact me by phone so I may reserve a conference room for us to use.

I received your F2848's on this matter and have forwarded them to our processing department.

Your letter indicates the Petition has been placed on the trial docket. Please note that I checked the Tax Court web page and did not see any appearance date assigned.

If you have any questions, please call me at the above phone number. Thank you for your cooperation with this matter.

Sincerely,

Appeals Officer



Department of the Treasury
Internal Revenue Service
Appeals Office
150 Court Street
Suite 105
Charleston, WV 25301

ERIC L. GREEN
700 STATE STREET SUITE 100
NEW HAVEN, CT 06511

Date:
April 3, 2018
Person to contact:
Name: APPEALS OFFICER
Employee number: 100077XXXX
Telephone: XXX-XXX-XXXX
Fax: XXX-XXX-XXXX
Contact hours: 8:00 a.m.-4:45 p.m..
Re:
CLIENT NAMES

Tax period(s) ended:
12/2014 12/2015
Docket number:
20018-17

Dear Mr. Green:

The Office of Appeals received your docketed United States Tax Court case for consideration. You provided new information to Appeals, not previously considered. We are returning your case file to the Compliance function to examine the new information and provide a preliminary determination. The Compliance examiner will analyze the new information, make recommendations for any changes to the proposed increase to tax, and return your case file to Appeals. Appeals will retain jurisdiction and settlement authority of your case during this process.

Please be advised that this process will be completed in compliance with the *ex parte* restrictions set forth in section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998. According to the *ex parte* requirements, you will be invited to participate in any substantive discussion of the disputed issues in your case between the two divisions (Compliance and Appeals).

Once the examiner completes their examination of the new information, your case file will be returned to Appeals. The Appeals Officer assigned to your case will take the examiner's recommendations into consideration, but Appeals is not bound to adhere to the examiner's conclusions.

Please feel free to call the Appeals Officer at the number shown above if you have any questions.

Sincerely,


Appeals Officer

Department of the Treasury - Internal Revenue Service
Collection Appeal Request
(Instructions are on the reverse side of this form)

1. Taxpayer's name		2. Representative (attach a copy of Form 2848, Power of Attorney)	
3. SSN/EIN	4. Taxpayer's business phone	5. Taxpayer's home phone	6. Representative's phone
7. Taxpayer's street address			
8. City		9. State	10. ZIP code
11. Type of tax (tax form)		12. Tax periods being appealed	13. Tax due

Collection Action(s) Appealed

14. Check the Collection action(s) you are appealing

- Federal Tax Lien Levy or Proposed Levy Seizure
 Rejection of Installment Agreement Termination of Installment Agreement Modification of Installment Agreement

Explanation

15. Explain why you disagree with the collection action(s) you checked above and explain how you would resolve your tax problem. Attach additional pages if needed. Attach copies of any documents that you think will support your position. Generally, the Internal Revenue Service Independent Office of Appeals will ask the Collection Function to review, verify and provide their opinion on any new information you submit. We will share their comments with you and give you the opportunity to respond

Under penalties of perjury, I declare that I have examined this request and any accompanying documents, and to the best of my knowledge and belief, they are true, correct and complete. A submission by a representative, other than the taxpayer, is based on all information of which the representative has any knowledge.

16. <input type="checkbox"/> Taxpayer's or <input type="checkbox"/> Authorized Representative's signature (only check one box)	17. Date signed
--	-----------------

IRS USE ONLY

18. Revenue Officer's name	19. Revenue Officer's signature	20. Date signed
21. Revenue Officer's phone	22. Revenue Officer's email address	23. Date received
24. Collection Manager's name	25. Collection Manager's signature	26. Date signed
27. Collection Manager's phone	28. Collection Manager's email address	29. Date received

Instructions for Form 9423, Collection Appeal Request

For Liens, Levies, Seizures, and Rejection, Modification or Termination of Installment Agreements

A taxpayer, or third party whose property is subject to a collection action, may appeal the following actions under the Collection Appeals Program (CAP):

- a. Levy or seizure action that has been or will be taken.
- b. A Notice of Federal Tax Lien (NFTL) that has been or will be filed.
- c. The filing of a notice of lien against an alter-ego or nominee's property.
- d. Denials of requests to issue lien certificates, such as subordination, withdrawal, discharge or non-attachment.
- e. Rejected, proposed for modification or modified, or proposed for termination or terminated installment agreements.
- f. Disallowance of taxpayer's request to return levied property under IRC 6343(d).
- g. Disallowance of property owner's claim for return of property under IRC 6343(b).

How to Appeal If You Disagree With a Lien, Levy, or Seizure Action

1. If you disagree with the decision of the IRS employee, and wish to appeal, you must first request a conference with the employee's manager. If you do not resolve your disagreement with the Collection manager, submit Form 9423 to request consideration by Appeals. Let the Collection office know within two (2) business days after the conference with the Collection manager that you plan to submit Form 9423. The Form 9423 must be received or postmarked within three (3) business days of the conference with the Collection manager or collection action may resume.

Note: If you request an appeal after IRS makes a seizure, you must appeal to the Collection manager within 10 business days after the Notice of Seizure is provided to you or left at your home or business.

2. If you request a conference and are not contacted by a manager or his/her designee within two (2) business days of making the request, you can contact Collection again or submit Form 9423. If you submit Form 9423, note the date of your request for a conference in Block 15 and indicate that you were not contacted by a manager. The Form 9423 should be received or postmarked within four (4) business days of your request for a conference as collection action may resume.
3. On the Form 9423, check the collection action(s) you disagree with and explain why you disagree. You must also explain your solution to resolve your tax problem. Submit Form 9423 to the Collection office involved in the lien, levy or seizure action.
4. In situations where the IRS action(s) are creating an economic harm or you want help because your tax problem has not been resolved through normal channels, you can reach the Taxpayer Advocate Service at 877-777-4778.

How to Appeal An Installment Agreement Which Has Been Rejected, Proposed for Modification or Modified, or Proposed for Termination or Terminated

1. If you disagree with the decision regarding your installment agreement, you should appeal by completing a Form 9423, Collection Appeal Request.
2. You should provide it to the office or revenue officer who took the action regarding your installment agreement, within 30 calendar days.

Note: A managerial conference is not required. However, it is strongly recommended a conference be held with the manager whenever possible.

Important: Never forward your request for an Appeals conference directly to Appeals. It must be submitted to the office which took the action on your installment agreement.

What Will Happen When You Appeal Your Case

Normally, we will stop the collection action(s) you disagree with until your appeal is settled, unless we have reason to believe that collection or the amount owed is at risk.

You May Have a Representative

You may represent yourself at your Appeals conference or you may be represented by an attorney, certified public accountant or a person enrolled to practice before the IRS. If you want your representative to appear without you, you must provide a properly completed Form 2848, Power of Attorney and Declaration of Representative. You can obtain Form 2848 from your local IRS office, by calling 1-800-829-3676, or by going to www.irs.gov.

Decision on the Appeal

Once Appeals makes a decision regarding your case, that decision is binding on both you and the IRS. You cannot obtain a judicial review of Appeals' decision following a CAP. However, there may be other opportunities to obtain administrative or judicial review of the issue raised in the CAP hearing. For example, a third party may contest a wrongful levy by filing an action in district court. See Publication 4528, Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b).

Note: Providing false information, failing to provide all pertinent information or fraud will void Appeals' decision.

Refer to Publication 594, The IRS Collection Process, and Publication 1660, Collection Appeal Rights, for more information regarding the Collection Appeals Program. Copies of these publications can be obtained online at www.irs.gov.

Privacy Act

The information requested on this Form is covered under Privacy Acts and Paperwork Reduction Notices which have already been provided to the taxpayer.

133 T.C. No. 16

UNITED STATES TAX COURT

KATHLEEN A. VINATIERI, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 15895-08L.

Filed December 21, 2009.

R issued P a notice of intent to levy to collect P's unpaid Federal income taxes for 2002. P timely requested a hearing under sec. 6330, I.R.C.

P submitted to the settlement officer Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, indicating she had monthly income of \$800 and expenses of \$800, had \$14 cash on hand, and owned a 1996 Toyota Corolla four-door sedan with 243,000 miles and a value of \$300. If P's wages are levied on she will be unable to pay her reasonable basic living expenses. If her car is levied on, she will be unable to work.

The settlement officer stated in her log that P meets the criteria to have her account reported as currently not collectible because of hardship in accordance with the Internal Revenue Manual (IRM). However, R's Appeals Office issued a notice of determination to proceed with levy, stating that P was

not entitled to collection alternatives because she had not filed her 2005 and 2007 Federal income tax returns. P timely petitioned for review of that determination under sec. 6330(d), I.R.C. R filed a motion for summary judgment. P, proceeding pro se, did not file a cross-motion for summary judgment.

Under regulations prescribed by the Secretary, the Secretary must release a levy upon all, or part of, a taxpayer's property or rights to property if, inter alia, the Secretary has determined that the levy is creating an economic hardship due to the financial condition of the taxpayer. Sec. 6343(a)(1)(D), I.R.C. The regulations provide that a levy is creating an economic hardship due to the financial condition of an individual taxpayer and must be released "if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses." Sec. 301.6343-1(b)(4), Proced. & Admin. Regs.

1. Held: Sec. 6343(a)(1)(D), I.R.C., and sec. 301.6343-1(b)(4), Proced. & Admin. Regs., require release of a levy that creates an economic hardship regardless of the taxpayer's noncompliance with filing required returns.

2. Held, further, a levy on P's wages or car would cause P to be unable to pay her reasonable basic living expenses, creating an economic hardship that would require release of the levy pursuant to sec. 6343(a)(1)(D), I.R.C., and sec. 301.6343-1(b)(4), Proced. & Admin. Regs.

3. Held, further, R's motion for summary judgment is denied because R's determination to proceed with the levy was wrong as a matter of law and, therefore, was an abuse of discretion.

Kathleen A. Vinatieri, pro se.

Martha J. Weber, for respondent.

OPINION

DAWSON, Judge: This matter is before the Court on respondent's motion for summary judgment filed pursuant to Rule 121.¹ Petitioner timely filed a petition pursuant to section 6330(d) appealing respondent's determination to proceed with collection by levy of petitioner's 2002 income tax liability. The issue to be decided is whether respondent's determination was an abuse of discretion.

Background

Petitioner resided in Tennessee when she filed the petition. Her residence is an apartment that she rents for \$600 per month.

On September 13, 2007, respondent sent petitioner a Final Notice of Intent to Levy and Notice of Your Right to a Hearing (levy notice). The underlying tax liability was attributable to unpaid self-assessed tax reported on her 2002 return. Petitioner timely requested a hearing on September 24, 2007, and the hearing was conducted through correspondence and by telephone with the settlement officer.

Petitioner first learned of the collection activity when her employer notified her about the proposed levy on her wages. When the settlement officer asked petitioner whether she wanted to

¹All Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code.

enter into an installment agreement, petitioner said "she has nothing."² Petitioner told the settlement officer that she has pulmonary fibrosis and is dying. Because of her health she can only find part-time employment.

The settlement officer could not find a record that petitioner had filed a return for 2005. Petitioner explained to the settlement officer that the payroll company responsible for completing her 2005 Form W-2, Wage and Tax Statement, was no longer in business. She had attempted to get the tax information from the Internal Revenue Service (IRS), but the IRS had no information regarding her income for 2005.

The settlement officer told petitioner that she might be able to have her account placed in currently not collectible status. The settlement officer asked petitioner to submit a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and a diagnosis regarding her current health condition.

Petitioner sent a completed Form 433-A, indicating she had monthly income of \$800 and expenses of \$800, had \$14 cash on hand, and owned a 1996 Toyota Corolla four-door sedan with 243,000 miles and a value of \$300. The Form 433-A reported that

²Petitioner explained to the settlement officer that she had previously agreed to pay in installments and that she was told she would be sent envelopes for each payment, but she never received the envelopes or monthly bills.

petitioner did not own any other assets. Verification received by the settlement officer was consistent with the information petitioner provided in the Form 433-A. Petitioner was unable to obtain a written diagnosis of her medical condition from her physician because her physician would provide a diagnosis only in a claim for worker's compensation.

The settlement officer's log entry dated May 15, 2008, states:

TP [petitioner] meets the criteria to have account placed in CNC [currently not collectible] status per IRM 5.16.[1.]2.9 Hardship. The balance due is less than 10K and the TP has stated she has a terminal illness. CIS verification is not required. The TP has stated she has nothing and is not able to full pay or make payments. However, the TP is not in compliance. The TP has not filed a 2005 return and there is no record of the 2007 tax return being filed. The TP stated she does not have income information for 2005 and company that did payroll is no longer in business. TP stated she contacted IRS and they advised her they have no income information. There is no information per IRTRL. S/O [the settlement officer] contacted TP regarding filing of the 2007 return. The TP stated the return was filed late. The S/O requested the TP fax a copy of the return with the W-2. TP to fax information by 5-19-08. S/O asked TP if she obtained health diagnosis and the TP stated the doctor would only give her something if she is applying for disability. S/O requested income information for 2005 per IRPTRE.

The settlement officer's log entry dated May 20, 2008, states:

TP did not provide a copy of 2007 return and there is no record that the return has been filed per IDRS research. The TP was employed in 2007 and is currently employed. The 2005 return has not been filed. Since the TP is not in compliance, collection alternative cannot be considered. S/O will issue determination

letter. If the 2005 income information is received, the S/O will forward it to the TP.

Respondent issued petitioner a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 (notice of determination) dated June 2, 2008, sustaining the proposed levy action and stating that, because petitioner was not in compliance with filing the required tax returns, a collection alternative could not be considered. The notice of determination was reviewed and signed by the Appeals team manager. The attachment to the notice of determination stated:

The settlement officer inquired about a collection alternative and you stated you could not make payments. You stated you had pulmonary fibrosis and can only work part-time hours due to your health condition. The Settlement officer [who] advised you of the collection alternative however explained a collection alternative could not be considered because you were not in compliance with filing required tax returns. * * *

The attachment explained the balancing of efficient tax collection with concern regarding intrusiveness as follows:

Appeals has verified, or received verification, that applicable laws and administrative procedures have been met; has considered the issues raised; and has balanced the proposed collection with the legitimate concern that such action be no more intrusive than necessary by IRC Section 6330(c)(3).

Collection alternatives include full payment, installment agreement, offer in compromise and currently-not-collectible. However, since unfiled tax returns exist, the only alternative at present is to take enforced action by levying your assets. It is Appeals decision that the proposed levy action is appropriate. The proposed levy action balances the need for the efficient collection of the taxes with the

legitimate concern that any collection action be no more intrusive than necessary.

Neither the notice of determination nor the attachment reflect any consideration of the fact that the levy would create an economic hardship as stated by the settlement officer in her daily log and supported by the Form 433-A petitioner submitted.

Petitioner timely filed a petition in this Court challenging respondent's determination. Respondent filed the motion for summary judgment, and the Court ordered petitioner to file a response.³ Petitioner filed a response to respondent's motion for summary judgment but did not file a cross-motion for summary judgment.⁴ In her response petitioner describes her situation as follows:

³In the order we observed that our preliminary review of the record indicated that the proposed levy action involved a hardship situation and that petitioner needed the assistance of an attorney. We urged petitioner to contact the legal aid society or the local bar association pro bono services and provided their addresses and phone numbers.

⁴After petitioner filed her response to respondent's motion for summary judgment, respondent filed a motion to continue the case wherein respondent stated that petitioner was in the process of submitting a collection alternative to the IRS and that, if the alternative is accepted by the IRS, a trial in this case would not be necessary. The Court granted respondent's motion and directed the parties to file a status report on or before July 27, 2009. In a status report filed on July 17, 2009, respondent reported that respondent has not received any communication from petitioner and requested the Court to grant respondent's motion for summary judgment.

To Whom It May Concern,

I don't know what you want to know cause I don't understand all the legal stuff you sent me. I can't afford a lawyer. And the closest legal aid is in Knoxville 30 miles away. My poor car will not go that far. So I will start at the beginning of my story and see if you can help me.

I was in an unhealthy relationship for many years. During a great deal of that time my husband was doing alcohol and drugs. I had 2 children plus his 3 to take care of. I had been doing janitorial work at a strip mall * * *. It was the only place that I could work that I could take my [then] 3 year old daughter with me. I could not support my family and pay day care. * * * My husband took care of bills and such cause he demanded that I turn over my money. We even got a divorce during that time cause I was not obeying him. * * *

Now I am not looking for sympathy just understanding. Do you know how hard it is to be a single parent? * * * I have a high school education and nothing else.

It was nearly five years before I was notified of a problem by the I.R.S. Danny [petitioner's former spouse] was suppose to be doing taxes. He even made me sign a form that because he made more money he could claim my kids on his taxes cause we were no longer legally married.

I got all the W-2's from the I.R.S. except 2005 that they still have not sent me. That is why they are not done. I did all those taxes and forfeited the refunds. I do not remember what that total came to. But it was enough to pay I would say most of back taxes. The 2007 taxes were late and I don't know why they didn't arrive. I sent a second copy in as soon as my son gave me my copy. He had my copy for college financial aid and he lost them for a bit of time.

I am not a rich person. I work in a job so I can be home with my daughter. I left my husband in July after he threatened to beat my daughter with a baseball bat. Beating me is one thing but I could not have him beating my girl. So I am a single parent again. Right

now we have not had much work in nearly a year. I have rent of 600 a mo. Utilities of 150 and get food stamps or I wouldn't eat. I make about 700-800 [per] month. There are no better jobs in our town. My daughter is only 11 so its not like I can leave her alone at night or on weekends. D.H.S. says it's not even legal. She is too young. There is no child care and I have no family here. I have pulmonary fibrosis that makes me sick all the time and the diagnosis says I have about 10 yrs to live. Right now I can work thank God.

I did my taxes this year [for 2008] and you are getting a little over \$4,700. I'm not asking for much just a break. You can have my tax returns [refunds ?] I don't care. Well I do that is a tremendous loss but oh well. I don't have any money to send you on a monthly basis. Can we stop all the penalties. They are killing me. I will never be able to pay it off. * * * I let a relationship screw me up. I am truly sorry for that and am begging for a lifeline here. You can come to my home and see for yourself. I don't have fancy t.v.'s or even cable except for internet. I can't afford a phone. My clothes have holes in them. I even cut my own hair. If I could pay this off faster I would just to stop the nightmares it gives me.

Discussion

A. Summary Judgment

Summary judgment is used to expedite litigation and avoid unnecessary and expensive trials. The Court will render a decision on a motion for summary judgment if the pleadings, answers to interrogatories, depositions, admissions, and other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. Rule 121(b). Because the effect of granting a motion for summary judgment is to decide the case against a party without allowing that party an

opportunity for a trial, the Court should grant the motion only after a careful consideration of the case. Associated Press v. United States, 326 U.S. 1, 6 (1945); Kroh v. Commissioner, 98 T.C. 383, 390 (1992).

For purposes of respondent's motion for summary judgment, respondent has the burden of showing the absence of a genuine issue as to any material fact. Petitioner is afforded the benefit of all reasonable doubt, and the material submitted by both sides is viewed in the light most favorable to petitioner. See, e.g., Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Kroh v. Commissioner, supra at 390.

Respondent moves the Court for summary judgment on the ground that the settlement officer did not abuse her discretion in rejecting collection alternatives and determining to proceed with levy because petitioner was not in compliance with the filing requirements. Petitioner asks that the levy not be sustained because, if her wages are taken, she will be unable to pay her basic living expenses; and, if her car is taken, she will not be able to work.

B. Collection of Federal Taxes by Levy

If a taxpayer liable for Federal taxes fails to pay the taxes within 10 days after notice and demand, section 6331 authorizes the Secretary to collect the tax by levy upon all property and rights to property (except any property that is

exempt under section 6334) belonging to the taxpayer or on which there is a lien for the payment of the tax.

Section 6343(a)(1) provides that, under regulations prescribed by the Secretary, if the Secretary has determined that the levy is creating an economic hardship due to the financial condition of the taxpayer, the Secretary must release a levy upon all, or part of, a taxpayer's property or rights to property.⁵ Sec. 6343(a)(1)(D). The regulations provide that a levy is creating an economic hardship due to the financial condition of an individual taxpayer and must be released "if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses." Sec. 301.6343-1(b)(4), *Proced. & Admin. Regs.*

A taxpayer alleging that collection of the liability would create undue hardship must submit complete and current financial data to enable the Commissioner to evaluate the taxpayer's qualification for collection alternatives or other relief.

⁵The regulations provide a method whereby a taxpayer may inform the Secretary that a levy is creating an economic hardship and request that the levy be released. See sec. 301.6343-1(c), *Proced. & Admin. Regs.* "A taxpayer who wishes to obtain a release of a levy must submit a request for release in writing or by telephone to the district director for the Internal Revenue district in which the levy was made." *Id.* However, service center directors and compliance center directors (to whom requests by taxpayers are not made) who have determined that a levy is creating an economic hardship must also release the levy and promptly notify the taxpayer of the release pursuant to sec. 301.6343-1(a), *Proced. & Admin. Regs.*

Picchiottino v. Commissioner, T.C. Memo. 2004-231. The regulations provide that, for purposes of determining the taxpayer's reasonable amount of living expenses, any information that is provided by the taxpayer is to be considered, including the following:

(A) The taxpayer's age, employment status and history, ability to earn, number of dependents, and status as a dependent of someone else;

(B) The amount reasonably necessary for food, clothing, housing * * *, medical expenses * * *, transportation, current tax payments * * *, alimony, child support, or other court-ordered payments, and expenses necessary to the taxpayer's production of income * * *;

(C) The cost of living in the geographic area in which the taxpayer resides;

(D) The amount of property exempt from levy which is available to pay the taxpayer's expenses;

(E) Any extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster; and

(F) Any other factor that the taxpayer claims bears on economic hardship and brings to the attention of the director.

Sec. 301.6343-1(b)(4)(ii), Proced. & Admin. Regs.

C. Section 6330 Procedures

Section 6330(a) provides the general rule that no levy may be made on any property or right to property of any taxpayer unless the Secretary has provided 30 days' notice to the taxpayer of the right to an administrative hearing before the levy is carried out. If the taxpayer makes a timely request for an

administrative hearing, the hearing is conducted by the IRS Office of Appeals (Appeals Office) before an impartial officer. Sec. 6330(b)(1), (3).

The taxpayer may raise any relevant issue during the hearing, including appropriate spousal defenses and challenges to "the appropriateness of collection actions", and may make "offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise." Sec. 6330(c)(2)(A). The taxpayer also may raise challenges to the existence or amount of the underlying tax liability if he/she did not receive a notice of deficiency for that liability or did not otherwise have an opportunity to dispute it. Sec. 6330(c)(2)(B).

During the hearing the Appeals officer must verify that the requirements of applicable law and administrative procedure have been met, consider issues properly raised by the taxpayer, and consider whether any proposed collection action balances the need for the efficient collection of taxes with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary. Sec. 6330(c)(3). The Appeals Office then issues a notice of determination indicating whether the proposed levy may proceed.

Under section 6330(d)(1) the taxpayer may petition this Court to review the determination made by the Appeals Office.

See sec. 301.6330-1(f)(1), Proced. & Admin. Regs. Where, as in this case, the underlying tax liability is not at issue, we review the Appeals Office's determinations regarding the collection action for abuse of discretion. Goza v. Commissioner, 114 T.C. 176 (2000). An abuse of discretion occurs if the Appeals Office exercises its discretion "arbitrarily, capriciously, or without sound basis in fact or law." Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

When a taxpayer establishes in a pre-levy collection hearing under section 6330 that the proposed levy would create an economic hardship, it is unreasonable for the settlement officer to determine to proceed with the levy which section 6343(a)(1)(D) would require the IRS to immediately release. Rather than proceed with the levy, the settlement officer should consider alternatives to the levy.

Respondent argues under the holdings of Rodriguez v. Commissioner, T.C. Memo. 2003-153, and McCorkle v. Commissioner, T.C. Memo. 2003-34, that there is no abuse of discretion if a settlement officer rejects collection alternatives because the taxpayer was not in compliance with the filing requirements for all required tax returns.⁶

⁶Generally, the IRS will not grant an installment agreement, accept an offer-in-compromise, or report an account as currently not collectible if any tax return for which the taxpayer has a filing requirement has not been filed. See Internal Revenue

Generally, we have found the Commissioner's policy requiring individuals seeking collection alternatives to be current with filing their returns to be reasonable.⁷ However, taxpayers in those cases have had sufficient income to meet basic living expenses. See, e.g., Speltz v. Commissioner, 124 T.C. 165, 178 (2005) (taxpayers claimed hardship because the tax liability was disproportionate to the value that they received from initial stock offerings and because they had already been forced to change their lifestyle), affd. 454 F.3d 782 (8th Cir. 2006); Peterson v. Commissioner, T.C. Memo. 2009-46 (the Court upheld rejection of taxpayers' offer of \$20,000 to compromise \$70,000 liability where, although they had minimal income from Social Security retirement and disability payments, they had reasonable collection potential of \$68,000 from two parcels of real property valued at \$80,000); Fangonilo v. Commissioner, T.C. Memo. 2008-75 (Commissioner's refusal to treat taxpayer's tax liability as

⁶(...continued)
Manual pts. 5.14.1.4.1(4)-(6) (Sept. 26, 2008) (installment agreements); 5.8.3.13(1), (2), (4) (Sept. 23, 2008) (offers-in-compromise); 5.16.1.1(5) and (6), 5.16.1.2.9(8) (May 5, 2009) (currently not collectible), 5.1.11.2.3 (June 2, 2004) (general collection procedures).

⁷In Estate of Atkinson v. Commissioner, T.C. Memo. 2007-89, we found reasonable requirements that an entity seeking collection alternatives to full payment, including reporting an account as currently not collectible, filing any outstanding tax returns and submitting a full financial statement and verification information for analysis. Mandatory release of levy creating an economic hardship applies only to individuals. Sec. 301.6343-1(b)(4), *Proced. & Admin. Regs.*

currently not collectible was not an abuse of discretion where although taxpayer's income was not sufficient to meet his stated monthly living expenses, he had a liquid asset worth more than his tax liability); Willis v. Commissioner, T.C. Memo. 2003-302 (taxpayers' ability to make some payments toward their cumulative liability made them ineligible to have the cumulative liability classified as currently not collectible); Rodriguez v. Commissioner, T.C. Memo. 2003-153 (taxpayer had not filed returns for 12 years and did not submit all of the financial information supporting her offer-in-compromise that the settlement officer requested); Ashley v. Commissioner, T.C. Memo. 2002-286 (taxpayer had income in excess of expenses and sufficient equity in his real property to pay his tax liability in full).

We have found no cases addressing the requirement that the taxpayer be current with filing returns in a levy case involving economic hardship under section 6343(a)(1)(D) and section 301.6343-1(b)(4), *Proced. & Admin. Regs.* Neither section 6343 nor the regulations condition a release of a levy that is creating an economic hardship on the taxpayer's compliance with filing and payment requirements. The purpose of section 6330 is to "afford taxpayers adequate notice of collection activity and a meaningful hearing before the IRS deprives them of their property." S. Rept. 105-174, at 67 (1998), 1998-3 C.B. 537, 603 (emphasis added). A determination in a hardship case to proceed

with a levy that must immediately be released is unreasonable and undermines public confidence that tax laws are being administered fairly. In a section 6330 pre-levy hearing, if the taxpayer has provided information that establishes the proposed levy will create an economic hardship, the settlement officer cannot go forward with the levy and must consider an alternative.

D. Appeals Office's Determination To Proceed With Levy of Petitioner's Assets

The financial information petitioner submitted on the Form 433-A, which was consistent with other information the settlement officer obtained, showed that if petitioner's wages are levied on, she will be unable to pay her basic living expenses; and, if her car is levied on, she will not be able to work. After analyzing petitioner's financial information, the settlement officer concluded that the levy would create an economic hardship and so stated in her log. However, the settlement officer determined collection alternatives to the levy, including an installment agreement, an offer-in-compromise, and reporting the account as currently not collectible, were not available because petitioner had not filed her 2005 and 2007 returns. The settlement officer's determination to proceed with the levy was reviewed and approved by the Appeals team manager who signed the notice of determination. Although the attachment to the notice of determination shows that the Appeals team manager was aware of petitioner's financial situation and health problems, the Appeals

team manager signed the notice of determination to proceed with the levy because petitioner had not filed her 2005 and 2007 returns. Proceeding with the levy would be unreasonable because section 6343 would require its immediate release, and the determination to do so was arbitrary. The determination to proceed with the levy was wrong as a matter of law and, therefore, was an abuse of discretion. Respondent is not entitled to summary judgment, and respondent's motion will be denied.

An order denying respondent's
motion will be issued.

26 U.S. Code § 6343. Authority to release levy and return property

U.S. Code Notes

(a) RELEASE OF LEVY AND NOTICE OF RELEASE

(1) IN GENERAL Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—

(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) release of such levy will facilitate the collection of such liability,

(C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise,

(D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

For purposes of subparagraph (C), the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary.

(2) EXPEDITED DETERMINATION ON CERTAIN BUSINESS PROPERTY

In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the Secretary shall provide for an expedited determination under paragraph (1) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) SUBSEQUENT LEVY

The release of levy on any property under paragraph (1) shall not prevent any subsequent levy on such property.

(b) RETURN OF PROPERTY If the Secretary determines that property has been wrongfully levied upon, it shall be lawful for the Secretary to return—

(1) the specific property levied upon,

(2) an amount of money equal to the amount of money levied upon, or

(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 2 years from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United

States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

(c) INTEREST Interest shall be allowed and paid at the overpayment rate established under section 6621

(1) in a case described in subsection (b)(2), from the date the Secretary receives the money to a date (to be determined by the Secretary) preceding the date of return by not more than 30 days, or

(2) in a case described in subsection (b)(3), from the date of the sale of the property to a date (to be determined by the Secretary) preceding the date of return by not more than 30 days.

(d) RETURN OF PROPERTY IN CERTAIN CASES If—

(1) any property has been levied upon, and

(2) the Secretary determines that—

(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

(C) the return of such property will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the National Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c).

(e) RELEASE OF LEVY UPON AGREEMENT THAT AMOUNT IS NOT COLLECTIBLE

In the case of a levy on the salary or wages payable to or received by the taxpayer, upon agreement with the taxpayer that the tax is not collectible, the Secretary shall release such levy as soon as practicable.

(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC.^[1] ON RETIREMENT PLAN

(1) IN GENERAL If the Secretary determines that an individual's account or benefit under an eligible retirement plan (as defined in section 402(c)(8)(B)) has been levied upon in a case to which subsection (b) or (d)(2)(A) applies and property or an amount of money is returned to the individual—

(A) the individual may contribute such property or an amount equal to the sum of—

(i) the amount of money so returned by the Secretary, and

(ii) interest paid under subsection (c) on such amount of money,

into such eligible retirement plan if such contribution is permitted by the plan, or into an individual retirement plan (other than an endowment contract) to which a rollover contribution of a distribution from such eligible retirement plan is permitted, but only if such contribution is made not later than the due date (not including extensions) for filing the return of tax for the taxable year in which such property or amount of money is returned, and

(B) the Secretary shall, at the time such property or amount of money is returned, notify such individual that a contribution described in subparagraph (A) may be made.

(2) TREATMENT AS ROLLOVER The distribution on account of the levy and any contribution under paragraph (1) with respect to the return of such distribution shall be treated for purposes of this title as if such distribution and contribution were described in section 402(c), 402A(c)(3), 403(a)(4), 403(b)(8), 408(d)(3), 408A(d)(3), or 457(e)(16), whichever is applicable; except that—

(A) the contribution shall be treated as having been made for the taxable year in which the distribution on account of the levy occurred, and the interest paid under subsection (c) shall be treated as earnings within the plan after the contribution and shall not be included in gross income, and

(B) such contribution shall not be taken into account under section 408(d)(3)(B).

(3) REFUND, ETC., OF INCOME TAX ON LEVY

(A) In general

If any amount is includible in gross income for a taxable year by reason of a distribution on account of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover contribution under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

(B) Exception

Subparagraph (A) shall not apply to a rollover contribution under this subsection which is made from an eligible retirement plan which is not a Roth IRA or a designated Roth account (within the meaning of section 402A) to a Roth IRA or a designated Roth account under an eligible retirement plan.

(4) INTEREST

Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.

(5) TREATMENT OF INHERITED ACCOUNTS

For purposes of paragraph (1)(A), section 408(d)(3)(C) shall be disregarded in determining whether an individual retirement plan is a plan to which a rollover contribution of a distribution from the plan levied upon is permitted.

(Aug. 16, 1954, ch. 736, 68A Stat. 789; Pub. L. 89-719, title I, § 104(i), Nov. 2, 1966, 80 Stat. 1138; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-167, § 4(a), Dec. 29, 1979, 93 Stat. 1275; Pub. L. 99-514, title XV, § 1511(c)(10), Oct. 22, 1986, 100 Stat. 2745; Pub. L. 100-647, title VI, § 6236(f), Nov. 10, 1988, 102 Stat. 3740; Pub. L. 104-168, title V, § 501(b), July 30, 1996, 110 Stat. 1460; Pub. L. 105-206, title I, § 1102(d)(1)(B), title III, § 3432(a), July 22, 1998, 112 Stat. 704, 759; Pub. L. 115-97, title I, § 11071(a), Dec. 22, 2017, 131 Stat. 2091; Pub. L. 115-123, div. D, title II, § 41104(a), Feb. 9, 2018, 132 Stat. 155.)

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