25-5402

DOCKET NO._____

ORIGINAL

FILED
AUG 11 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIRT

MARTIN G. PLOTKIN

Petitioner – Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent – Appellee

# PETITION FOR WRIT OF CERTIORARI

Martin G. Plotkin
Petitioner, pro se
701 Mt. Homer Rd., Apt. 42
Eustis, Florida 32726 (352) 589-9400

**QUESTIONS**

1. Do the intentional, deliberate, and purposeful actions and statements of Tax Court Judge Morrison, whether derived from 'judicial' or 'extrajudicial' sources, which began shortly after his assignment to the case and continued throughout the entire 8 years of the proceedings, evidence an extreme level of pervasive bias and favoritism such that he was unwilling and unable to render a fair judgment.
2. Given the intentional, deliberate, and purposeful actions of Judge Morrison, did the court err in failing to grant Plotkin's motions for Judge Morrison's recusal or reassignment.
3. Did Judge Morrison, deliberately and intentionally disregarding the requirements of Tax Court Rule 121, err in granting the IRS summary judgment based upon his knowingly false 'interpretation' of Plotkin's allegation of incorrect §6330(c)(1) verification, an 'interpretation' that at best, and in the light most favorable to Judge Morrison, might be considered as an 'inference' favoring the IRS ,
4. Do the intentional, deliberate, and purposeful actions and statements of the Court of Appeals, including misstatement and fabrication, whether derived from 'judicial' or 'extrajudicial' sources, evidence an extreme level of pervasive bias and favoritism such that the Court of Appeals was unwilling to render a fair judgment.
5. Did the deliberate, intentional and purposeful actions of both Tax Court Judge Morrison and the 11th Circuit Court of Appeals deprive Plotkin of his right to due process as provided for in Amendment 5 to the Constitution of the United States through their

inability and unwillingness to decide Plotkin's case fairly and impartially and in an unbiased manner.

6. Did the Internal Revenue Service Office of Appeals abuse its discretion by verifying and determining the IRS had, as mandated by IRC §6330(c)(1), met the requirements of any applicable law prior to sending Plotkin a notice of intent to levy, despite having received actual notice from the IRS that it had not met the requirements of several laws before sending that notice.

7. Did the Internal Revenue Service Office of Appeals, despite the information in the administrative file it had obtained during the course of the CDP hearing, abuse its discretion by determining the 'balancing test' provided for by IRC §6330(c)(3) favored sustaining the levy action proposed by the IRS.

8. Did the Internal Revenue Service Office of Appeals abuse its discretion by determining the 'balancing test' provided for by IRC §6330(c)(3) favored sustaining the levy action proposed by the IRS because the hearing officer could not, as she wanted, close Plotkin's case as 'currently not collectible' (CNC), even though Plotkin had not requested that the hearing officer consider the collection alternative of CNC status.

9. Given the requirement in 26 U.S.C. 7443 that judges of the Tax Court are to be nominated by the President of the United States and confirmed by the U.S. Senate, does 26 U.S.C. 7447 validly authorize the chief judge of the Tax Court to appoint, as Senior Judges with full judicial powers, those former judges of the Tax Court who's terms have expired and whom the President of the united States has specifically refused to

nominate for an additional term even though those former judges have advised the President of their desire to serve an additional term..

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT**

The Undersigned Petitioner/Appellant hereby certifies that the following is a complete list of all persons and legal entities known to him who may have an interest in the outcome of this case:

| | | |
|---|---|---|
| 1. | Lora Davis | Office of Appeals CDP hearing officer |
| 2. | Miriam C. Dillard | Respondent's IRS Attorney in Tax Court |
| 3. | Richard T. Morrison | Former Tax Court Judge |
| 4. | William M. Paul | Respondent's IRS Attorney in Tax Court |
| 5. | Martin G. Plotkin | Petitioner/Appellant |
| 6. | Carl D. Wasserman | Counsel for IRS Appellee |

**LIST OF PROCEEDINGS**

United States Tax Court

Martin G. Plotkin v. Commissioner of Internal Revenue Docket No. 16224-14L

Judgment entered October 24, 2023

Court of Appeals for the Eleventh Circuit

Martin G. Plotkin v. Commissioner of Internal Revenue Docket No. 24-10667

Judgment entered May 15, 2025

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES**

**CASES CITED**

**TAX COURT OPINIONS**



**OFFICIAL CITATIONS – TAX COURT MEMORANDUM OPINIONS**



**INBTERNAL REVENUE MANUAL SECTIONS**

**STATUTES and RULES**



**APPENDIX** **ITEM NO.**

**OFFICIAL CITATIONS – TAX COURT MEMORANDUM OPINIONS**

Plotkin v. Commissioner, TC Memo 2019-27

**JURISDICTIONAL STATEMENT**

The Tax Court decision was entered October 24, 2023. A motion to vacate was timely mailed November 22, 2023, (26 U.S.C. §7502; Tax Ct. R, 22(c), 162), and denied December 4, 2023. Notice of appeal was required to be filed within 90 days of the denial of the motion.

Plotkin's Notice of Appeal to the Eleventh Circuit Court of Appeals was filed Monday, March 4, 2023, 91 days after denial of the motion to vacate. However, the 90th day fell on a Sunday; thus the notice of appeal was timely filed, (F.R.A.P. 26(a)(1)(c). The decision of the Court of Appeals was issued May 15, 2025

Petition to the Supreme Court of the United States for certiorari is authorized by Article III, Section 2, Clause 2 of the Constitution of the United States, and 28 U.S.C. §1254, and is to be file within 90 days of the entering of the decision of the Court of Appeals.

**STATEMENT OF THE CASE and RELEVANT FACTS**

This case is about the deliberate, intentional, and continuous actions of Tax Court Judge Morrison evidencing his bias and lack of impartiality, displayed throughout the lengthy proceedings; actions that were went far beyond what could be considered normal and acceptable, and showed an extreme and deep-seated and pervasive bias that resulted in Judge Morrison's unwillingness and inability to render a fair judgment, and in the intentional denial of Plotkin's constitutional right to due process. This case is also about the bias of the Eleventh Circuit Court of Appeals, evidenced in the willingness to fabricate facts to provide support for affirming Judge Morrison's ruling, which further denied Plotkin his constitutional right to due process.

Plotkin, a Wharton School graduate and former practicing attorney, formed a limited partnership, (the 'second-tier' partnership), which purchased an interest in a limited partnership, the 'first tier' partnership), that owned and leased a health-care facility. From the rents it received , the 'first-tier' partnership made partnership distributions to the 'second-tier' partnership, which used some of the monies it received to pay expenses, and distributed the remainder to its partners.

Treating the 'second-tier' partnership as a true partnership, Plotkin filed his 1991 - 1993 income tax returns without including as income the monies received by the 'second-tier' partnership from the 'first-tier' partnership. An IRS investigation concluded the 'second-tier' partnership was a 'sham', and its receipts and disbursements were all attributable to Plotkin; resulting in Plotkin's indictment for under-reporting his income for 1991, by $81,607, 1992 by

$68,404, and 1993 by $94,491, resulting in tax due for 1991 of $14,497, 1992 of $9,417, and 1993 of $15,651.

In 2000, a bench trial was held before U.S. District Court Judge Catherine Perry. She found the 'second-tier' partnership to be a 'sham' and Plotkin's 'alter-ego'. and, finding Plotkin guilty of filing false tax returns, sentenced him to 2 year's probation. No appeal from Judge Perry's decision was taken.

Based solely on the IRS's trial schedules, using only the amounts received by the 'second-tier' partnership and ignoring its disbursements, in 2008 the IRS issued Plotkin the following notice of deficiency:

| | Deficiency | additions to tax | penalties | total due |
|---|---|---|---|---|
| 1991 | $108,652 | --- | $78,448 | $187,100 |
| 1992 | 61,885 | --- | 46,414 | 108,299 |
| 1993 | 52,397 | --- | 39.298 | 91,695 |
| 1994 | 45,490 | 46,697 | -- | 92,187 |
| 1995 | 320,852 | 250,936 | --- | 571788 |
| | | | | $1,051.069 |

Plotkin appealed to the Tax Court, and despite Judge Perry's ruling and this Court's multiple holdings that once the IRS had challenged in court a taxpayer's filing method, both parties were bound by the resulting decision in subsequent cases, on January 27, 2012 the Tax Court determined the 'second-tier' partnership was not a 'sham' but a 'conduit' for Plotkin, and that the monies Plotkin received were for services he rendered to the 'second-tier' partnership, and found the following deficiencies:

| | Deficiency | additions to tax | penalties | total due |
|---|---|---|---|---|
| 1991 | $108,652 | --- | $78,448 | $187,100 |
| 1992 | 61,885 | --- | 46,414 | 108,299 |
| 1993 | 52,397 | --- | 39.298 | 91,695 |
| 1994 | 45,490 | $33,324 | -- | 92,187 |
| 1995 | 66,031 | 3,605 | --- | 69,636 |
| | | | | $548,917 |

Plotkin appealed the Tax Court decision to the 11th Circuit Court of Appeals. On November 27, 2012, disregarding this Court's multiple holdings to the contrary, the 11th Circuit Court of Appeals affirmed the Tax Court decision, stating that since Plotkin had chosen to file his tax returns on the basis that the 'second-tier' partnership was a true partnership, he was bound to that position in the subsequent Tax Court proceedings. This Court declined to review the 11th Circuit Court of Appeals decision.

On March 5, 2012, the IRS assessed Plotkin's total tax liability, which included the amounts determined by the Tax Court, other prior amounts, and interest.

On February 11, 2013. After a review of Plotkin's IRS tax account, the reviewer entered into the IRS computer the following NARRATIVE notation:

> " TC340 interest computation dated 03/05/2012 erroneously includes accruals on $7,590.38 deficiency with a CSED that expired 11/14/2004; interest/penalty accruals on expired CSED deficiencies should not be assessed because those amounts cannot be collected. The same issue exists for the tax years 1991 and 1993."

The IRS took no action as a result of the discovery of its errors, and, Instead, on July 29, 2013, the IRS issued Plotkin a Final Notice of Intent to Levy and Right to a Hearing, (the CDP Notice), which set forth Plotkin's total tax liability, and looked as follows:

| | Unpaid from prior notices | add'l penalty | amount you owe |
|---|---|---|---|
| 1991 | $732,197.89 | --- | $732,197.89 |
| 1992 | 406,641.23 | $11,397.14 | 418,038.87 |
| 1993 | 312,357.85 | --- | 312,357.85 |
| 1994 | 242,576.49 | -- | 242,576.49 |
| 1995 | 171,260.68 | --- | 171,260.68 |
| | | | 1,876,431.28 |

On August 27, 2013, Plotkin requested a Collection Due Process (CDP) hearing, and IRS Collections sent his case file to the Office of Appeals.

On December 19, 2013 Appeals Officer Valerie Chavez sent a letter to Plotkin, scheduling the initial telephone hearing for February 6, 2014, writing:

"Please read the next page and provide the requested documentation if you want to be considered for a collection alternative. ...

**For me to consider alternative collection methods such as currently not collectible, installment agreement or offer in compromise, you must provide the items listed below.**

- **A collection information statement (Form 433-A for individuals ...)"**

On February 6, 2014, Appeals Officer Chavez sent Plotkin a letter rescheduling the hearing, and explaining:

"We can however, consider a collection alternative for you. You will need to provide a complete Form 433-A ... by March 6, 2014.

"If you are physically unable to speak for the hearing, we can communicate by mail. I will consider your mailed correspondence and the information in your administrative file to make my final decision."

On April 28, 2014. Appeals Officer Davis sent Plotkin a letter, explaining:,

"I have been assigned your case from Ms. Chavez. ...

"**On Form 12153, you did not select a collection alternative.** If you are interested in reaching a collection alternative for the balances due please provide the following information;

· **A completed signed Form 433-A Financial Information Statement**."

On June 9, 2014, the CDP hearing concluded with Appeals Officer Davis issuing a Notice of Determination upholding the proposed levy. ;Plotkin appealed the Appeals Office's decision to the Tax Court.

On October 8, 2015, the IRS filed a motion for summary judgment, which was denied. On October 12, 2017, the IRS filed a second motion for summary Judgment, and the case was assigned to Judge Morrison. The motion noted that in the CDP hearing request Plotkin had alleged the levy notice was invalid as the IRS had not met the requirements of any applicable law before it was issued. The motion was supported by the sworn Declaration of Appeals Officer Lora Davis, with copies of the CDP hearing administrative File attached.

The IRS alleged that after reviewing various Forms 4340 and income tax transcripts, Appeals had, pursuant to §6330(c)(1), properly verified that assessment, notice and demand for payment, and all other legal requirements of any applicable law had been met before the subject levy notice was issued. Included in Appeals Officer Davis' Declaration were the Forms 4340 and income tax transcripts she had reviewed which detailed the expired and uncollectible

amounts that had been assessed and included in the Notice and Demand for Payment and CDP Levy Notice; also included were Exhibits G and E, both of which contained the IRS February 11, 2013 NARRATIVE.

On November 8, 2017, Plotkin filed a motion for summary judgment; on November 13, 2017 he filed his response to respondent's summary judgment motion, and his amended motion for summary judgment, attaching to both the NARRATIVE notation, and alleging the IRS had not met the requirements of any applicable law as mandated by §330(c)(1) before issuing the levy notice.

On November 28, 2017, Judge Morrison:

"ORDERED that Petitioner's document filed November 8, 2017, is recharacterized as Petitioner's motion for partial summary judgment. It is further

"ORDERED that Petitioner's document filed November 13, 2017, is recharacterized as Petitioner's amended motion for partial summary judgment."

Following Plotkin's November 13, 2017 filings, respondent's counsel had numerous conversations, reported in the Case Activity Record, with Davis and other Appeals Office personnel concerning the NARRATIVE, and in her February 5, 2018 reply to Plotkin's response to respondent's summary judgment motion, respondent's counsel conceded that the NARRATIVE identified wrongful reinstatements of previously written-off expired amounts which were no longer legally collectible, as well as incorrect amounts of accrued interest, all of which were included in the assessments shown in the levy notice. Counsel told the court that Appeals Officer Davis had "failed to notice' the incorrect assessments detailed on the Forms 4340 and tax transcripts, and had "overlooked" the documents containing the NARRATIVE. Counsel

admitted that these amounts violated the requirements of an applicable law limiting the time for collection, specifically §6502(a)(1), and were wrongfully included in the assessed amounts the levy sought to collect. Counsel also provided the court with Plotkin's currently corrected IRS tax transcripts showing abatement of the incorrect amounts included in the incorrect assessments.

On February 27, 2018, Plotkin filed a summary judgment motion, and echoing the words of §6330(c)(1), wrote:

"What is dispositive is the fact that, irrespective of any computer transcripts and reports obtained by Appeals during their investigation, the hearing officer had actual knowledge provided by the IRS (and confirmed by the Respondent)that the assessment and notice and demand for payment were wrong, and that all of the applicable legal and administrative requirements had not been met prior to issuance of the notice of intent to levy.

"In addition, what is dispositive is that despite having actual knowledge that all applicable legal requirements had not been met, the Appeals Hearing Officer twice, first in the Notice of Determination and then, in a sworn Declaration submitted to thee court as evidence, stated that she had verified that all legal and administrative requirements had been met, thus allowing her to sustain the proposed levy action."

On March 13, 2018, Plotkin filed his sur-reply to respondent's reply to the response to respondent's motion for summary judgment, again disputing that Appeals' § 6330(c)(1) verification had been correct, writing:

" Sustaining the proposed levy action despite having actual knowledge supplied by the IRS that the assessment of Petitioner's tax liability had not been properly made and was wrong, and that therefore all legal and administrative requirements for the action taken had not been met, is a clear abuse of discretion."

On April 4, 2019, despite Plotkin's multiple allegations that the IRS had not met the requirements of several applicable laws, and respondent's admission as to that fact, Judge

Morrison issued his Memorandum Opinion, published as Plotkin v. Commissioner, TC Memo 2019-27, finding there was no dispute concerning any material fact as to Appeals' §6330(c)(1) verification, and granting respondent summary judgment. Discussing the incorrect assessments and Plotkin's motion, Judge Morrison 'Interpreted' Plotkin's actual 'intent', writing:

"... in 1994 respondent assessed self-reported tax (and related penalties and interest) for tax year 1991, 1992, and 1993: in 2004 periods for collecting these amounts expired; in 2012 respondent erroneously reversed his write-off of these self-reported liabilities; in July 2013 respondent issued a notice of intent to levy to collect these and other amounts; and in June 2014 the Office of Appeals sustained this collection action.", ...

"The motion stated that the February 11, 2013 notation in respondent's narrative history record for petitioner's 1992 tax year showed that the "assessment" made on March 5, 2012 was incorrect. Although the motion literally asserted that the "assessment" made on March 5, 2012 was incorrect, [*"fn.6 – The motion stated; The IRS itself determined that the assessments made on March 5, 2012 ***were incorrect; therefore the Notice of Intent to Levy is invalid."]* it was actually the assessments made in 1994 that became uncollectible because of the expiration of the 10-year periods for collecting assessments. These amounts were written off by respondent 2004, but the write- offs were reinstated in 2012. Therefore, we interpret Petitioner's argument to be that the March 5, 2012 reinstatement of the 1994 assessments was incorrect because of the expiration of the collection periods".

Having eliminated, by his 'interpretation', Plotkin's dispute concerning Appeals' §6330(c)(1) verification, Judge Morrison concluded:

"Because of the information in the Forms 4340, and because petitioner has not identified any other particular requirement of applicable law or administrative procedure that has not been met, we hold that the Office of Appeals did not abuse its discretion in performing the verification mandated by section 6330(c)(1).", Emphasis added.

Judge Morrison then proceeded to consideration of the Appeals Officer's determination that sustaining the proposed levy met the requirements of the 'balancing test' of §6330(c)(3). In

the Case Activity Record were entries by Appeals Officers Chavez and Davis, both of whom had reviewed Plotkin's income information found it limited to his social security benefits, and determined he had no ability to make any payment in regard to his tax liability. However, at 8:00 a.m. on June 9, 2014, Appeals Officer Davis printed-out a 7-page income tax transcript, clearly identified on each page as a 2011 Form 1040 transcript. The transcript also contained IRS codes which identified the transcript as a product of 'identity theft'. Appeals Officer Davis hand-wrote on the first page, "2013/1040", and fifteen minutes later, sustained the proposed levy, writing:

"Review of the income information to see if Tp would be deemed hardship IRP reflects SS income only; howeverTRDBV (return transcript) for 2013 reflects dividends in the amount of 28510.00 SS incoem17180.00; review of this reflects that TP may have an ability to make payment toward the balances due. To issue determination letter to TP.

"Notice of Intent to levy action is sustained."

Despite the reason she had given for sustaining the proposed levy, in the April 4, 2019 Memorandum Opinion, Judge Morrison found that:

"... Settlement Officer Davis apparently assumed that the identity-theft return for 2011 was a genuine return and that the return reflected that petitioner earned dividend income, this error was harmless. The analysis of the balancing in the notice of determination hinged on petitioner's failure to submit the collection-information-statement, not on his supposed dividend income."...

"Appeals would have sustained the levy even had there been no identity-theft return.", and concluded,

"There are no genuine disputes as to any facts that are material to the question of whether to sustain the determination."

On April 26, 2019, Judge Morrison issued a corresponding Order and Decision granting the IRS summary judgment. However, based upon Everett Associates v. Commissioner, T.C. Memo

2012-143, involving a taxpayer's §6330(c)(2) allegation of an incorrect amount of the underlying tax liability, Judge Morrison granted Plotkin partial summary judgment, and sustained the levy but excepted out the unlawfully and incorrectly assessed amounts.

**Also on** April 26, 2019, Plotkin filed a Motion for Reconsideration of the Memorandum Opinion in which he identified more than twelve specific instances where Judge Morrison had made assumptions and inferences of fact favoring respondent contrary to Tax Court Rule 121.

On May 9, 2019, in order to consider Plotkin's motion for reconsideration, Judge Morrison vacated and set aside his Order and Decision:

On May 20, 2020, Judge Morrison issued an unpublished order, called an 'amendment', withdrawing parts of his April 4, 2019 Memorandum Opinion, but leaving in place, without discussion, his finding that respondent remained entitled to summary judgment on the issue of Appeals' §6330((c)(1) verification.

Regarding Appeals' §6330(c)(3) balancing test determination, Judge Morrison admitted to wrongful 'inferences' but justified his actions as supportable but merely made at the wrong time in the proceedings;

"In evaluating a summary judgment motion, the Court must draw inferences in favor of the non-moving party. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Thus, in evaluating respondent's summary judgment motion we should have drawn our inferences in favor of petitioner."

"Our opinion made an inference regarding the Office of Appeals' conclusion that the proposed levy met the balancing test; we inferred that the conclusion rested independently on petitioner's failure to provide the collection-information statement. This inference is supportable".

"However, such an inference would favor respondent. ... At this point in the litigation we are to draw inferences in favor of petitioner."

The May 20, 2020 Order concluded by stating that the only unresolved issue remaining was Appeals' determination as to the balancing test of §6330(c)(3).

Given Judge Morrison's admission and excuse for disregarding the requirements of Tax Court Rule 121, and his refusal to withdraw his 'interpretation' of Plotkin's allegation of Appeals' incorrect §8330(c)(1) verification, which was, at best, another 'inference' improperly favoring the IRS, on July 20, 2020 Plotkin filed motions with both the court and the Chief Judge requesting Judge Morrison's recusal or removal; those filed with the Chief Judge were given to Judge Morrison for response. On September 15, 2020 the motions were denied.

On October 12, 2020, pursuant to 26 U.S.C. 455, Plotkin filed a motion requesting Judge Morrison's recusal; the motion was denied on November 4, 2020

Plotkin then filed a motion for permission to file an interlocutory appeal as to the §6330(c)(1) verification; that motion was also denied.

On February 3, 2021, at respondent's request, the court ordered that:

"this case is remanded to respondent's Office of Appeals for clarification and for further consideration in order to enable the Court to understand respondent's determinations in the notice of determination with respect to the balancing test."

Plotkin resumed correspondence with Appeals, enclosing copies of both documents containing the IRS NARRATIVE notation which respondent's counsel represented to the court

had been 'overlooked' by Appeals Officer Davis. On January 17, 2022, Plotkin wrote to Appeals Officer Davis, enclosing a detailed discussion of the 6330(c)(1) verification issue:

"Both the Court and counsel for the Commissioner have conceded that, as shown in these documents received from the IRS, the assessments of my underlying tax liability made on March 5, 2012, violated the requirements of an applicable law, specifically IRC6502(a)(1).

"Why the IRS assessed an unlawful amount is irrelevant; the simple and undeniable fact, admitted by the IRS, is that they did. And obviously, for purposes of the verification mandated by section 6330(c)(1), the requirements of all applicable laws were not met prior to issuing the notice of proposed levy in 2013.

"In addition, since the assessments did not meet the requirements of applicable section 6502(a)(1), the notice and demand for payment sent by the IRS also did not meet the requirements of applicable section 6303, as the amount shown as my total underlying tax liability was incorrect, and a demand for payment was made for an unlawful amount."

Responding, Appeals Officer Davis refused to reconsider her original 2014 verification determination, explaining that any such reconsideration was outside the scope of the remand and was therefor prohibited by the provisions of the Internal Revenue Manual (IRM).

On February 2, 2022, a second Supplemental Notice of Determination was issued, sustaining the proposed levy. In the notice, Appeals Officer Davis confirmed that, although Plotkin was not required to request a collection alternative or 'currently not collectible', (CNC) status, and he had not done so, because Plotkin had chosen not to make such a request and submit the required supporting Form 433-A, she could not classify the subject tax liability as CNC, and therefore she had no option but to determine the proposed levy satisfied the 'balancing test' of §6330(c)(3).

On August 8, 2022, Plotkin filed a summary judgment motion, supported in part by his affidavit reiterating his intent was, as he had always written, to allege incorrect §6330(c)(1)

verification. Respondent's counsel responded, arguing the court had decided the verification issue in its April 4, 2019 Memorandum Opinion, and on October 13, 2022, Plotkin's motion was denied.

Trial was held on December 16, 2022. The only evidence admitted was respondent's Trial Exhibit 1000-R, which included all of the correspondence, including attachments, between Plotkin and Appeals throughout both remands, and a complete copy of the Case Activity File containing all entries from November,2013 through February,2022.

On October 19, 2023 , Judge Morrison issued a Memorandum Finding of Facts and Opinion, published as Plotkin v. Commissioner, T.C. Memo 2023-125, in which, concerning the 6330(c)(3) 'balancing test' issue he wrote:

" ... Our Order of May 20, 2020 drew all inferences about the administrative record in favor of petitioner., the party opposing respondent's Motion for Summary Judgment. See Naftel, 85T.C. at 529. But we are not now evaluating the merits of a Summary Judgment Motion filed by respondent. We are weighing the evidence adduced at trial . Furthermore, the administrative record is now different from the one we considered in our Order of May 20, 2020."

Finding Appeals' inability to determine Plotkin's tax liability as CNC because Plotkin did not provide the Form 433-A needed to make such a determination, Judge Morrison upheld Appeals' determination that the 'balancing test' supported sustaining the proposed levy . As to the verification issue, he wrote:

"All other issues in this case were resolved by our April 4, 2019 Memorandum Opinion, as modified by our May 20, 2020, Order."

On October 24, 2023, Judge Morrison issued a corresponding Order and Decision granting the IRS summary judgment in regard to the IRC6330(c)(1) verification issue, denying Petitioner's motions, and sustaining Appeals' determination to sustain the proposed levy, with the exception of the unlawfully included assessed amounts.

On August 27, 2023 Judge Morrison's term expired, and as of August 28, 2023 Richard T. Morrison ceased to be a judge of the United States Tax Court.

Subsequently, Plotkin filed several motions to vacate, reconsider, or revise the Order and Decision; the last of Plotkin's motions to vacate was denied on January 18, 2024. All of these motions were considered and denied subsequent to the expiration of Judge Morrison's term of office as a Tax Court Judge, and all were denied by Order signed "Richard T. Morrison, Judge".

On April 24, 2024, Plotkin appealed the Tax Court decision to the 11th Circuit Court of Appeals, detailing in his brief the extensive proceedings and the facts of the case, all of which were either undisputed or conceded by both the IRS and Judge Morrison. In support of his position as to the incorrect §6330(c)(1) verification, Plotkin referenced Internal Revenue Manual, (IRM) provisions and Medical Practice Solutions, LLC v. Commissioner, TC Memo 2009-214, both of which held incorrect assessment meant the CDP hearing was to immediately cease as the requirements of an applicable law had not been met and therefore the levy could not be legally enforced and was invalid.

In support of his position as to incorrect application of the §6330(c)(3)(C) balancing test, Plotkin cited Giamelli v. Commissioner, 129 TC 107 (2007) holding that in applying the balancing

test, an Appeals Officer was prohibited from considering collection alternatives not offered by the taxpayer during the course of the hearing.

Plotkin also alleged Judge Morrison's actions constituted a lack of impartiality, depriving him of his constitutional right to due process, and, further, that Judge Morrison lacked the authority to render the decisions he did.

On May 15, 2025, the Court of Appeals "... recount[ing] only the facts and procedural history necessary to our ruling...", issued its decision affirming the decision of the Tax Court. As to Appeals' verification, it found:

"..., on remand, the Appeals Office's second supplemental notice of determination correctly excluded [the] erroneous amount. Further, the erroneous amounts' initial inclusion [in the assessments] does not constitute an irregularity that rebuts the presumption that an account transcript provides proper verification under §6330(c)(1)."

As to Appeals' application of the § 6330(c)(3)(C) balancing test, the Court of Appeals held:

"... the Tax Court correctly determined that the Appeals Office did not abuse its discretion in determining that §6330(c)(3)(C)'s balancing test was satisfied because

(1) Plotkin never asked the Appeals Office or the Tax Court to consider a collection alternative based on his financial status or even
(2) ,submitted any financial information from which the Appeals Office could have conducted the required balancing test differently than it did. "

As to Plotkin's allegation of denial of due process and Judge Morrison's lack of impartiality, the Court of Appeals held that since it had affirmed Judge Morrison's decision, he could not have lacked impartiality or been biased.

As to Plotkin's allegation that Judge Morrison lacked the authority to act as a judge, the Court of Appeals, citing Byers v. Commissioner, 740 F.3d 668, 679 (D.C. Cir. 2014), found Judge Morrison had the proper authority pursuant to §7447(c).

**ARGUEMENT**

**EXCERPTS - Constitutional Provision, Statutes, Internal Revenue Manual Provisions, and Cases**

**BIAS, LACK OF IMPARTIALITY, and DUE PROCES - Excerpts**

"No person shall ... be deprived of life, liberty, or property, without due process of law, ..."

Constitution of the United States – Amendment V

"The theory of the law is that a juror who has formed an opinion cannot be impartial" Reynolds v. US, 98 US 145, 158

"A fair trial in a fair tribunal is a basic requirement of due process." Jones v. Lubbers, 589 F3d 1005 (8th Cir., 2004); citing In re Murchison, 349 US 133, 136 (1955).

An extrajudicial source is not the exclusive basis for establishing disqualifying bias. Liteky v. U.S., 510 US 540 (1994)

"But trial rulings have a judicial expression rather than a judicial source . They may well be based upon extrajudicial knowledge or motives." Liteky at 545

"A favorable or unfavorable predisposition can also deserve to be characterized as 'bias' or 'prejudice' because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment." L:iteky, at At 551

**I.R.C §6330(c)(1) VERIFICATION - Excerpts**

**IRC §6330 – NOTICE AND OPPORTUNITY FOR HEARINGBEFORE LEVY.**

(a) Requirement of Notice Before Levy –

(1) IN GENERAL - No levy may be made on any property ... of any person unless the Secretary has notified such person in writing of their right to ahearing under this section before such levy is made. ...

**(2)** TIME AND METHOD FOR NOTICE - Thee notice required ... shall be –

(A) given in person;

(B ) left at the dwelling, usual place of business of such person; or

(C) sent by certified or registered mail not less than 30 days before the day of the first levy.

(3 INFORMATION INCLUDED WITH NOTICE) – The notice ... shall include ...-

(A )the amount of unpaid tax;

(B) the right ... to request a hearing; and

(C) the proposed action ... and the rights of the person with respect to such action ...

(b) RIGHT TO FAIR HEARING - If the person requests a hearing in writing ... ,uch hearing shall be held by the Internal Revenue Service Office of Appeals.

(c) MATTERS CONSIDERED AT HEARING

- In the case of any hearing conducted under this section -

(1) REQUIREMENT OF INVESTIGATION - The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

(2) ISSUES AT HEARING -

(A) IN GENERAL - The person may raise at the hearing any relevant issue rel ating to the unpaid tax or the proposed levy, including – ...

(ii) challenges to the appropriateness of collection actions, and

(iii) offers of collection alternatives, which may include ... an installment agreement, or an offer-in-compromise.

(B) UNDERLYING LIABILITY - The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability ... if the person did not receive a statutory notice of deficiency ... or did not otherwise have an opportunity to dispute such tax liability.

(3) BASIS FOR THE DETERMINATION - The determination by an appeals officer ... shall take into consideration -

(A) the verification presented under paragraph (1);

(B) the issues raised under paragraph (2); and

(C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

* * * * * * * * * * * * * * * * * * * * *

"... in CDP cases, the Appeals hearing officer is responsible for making a determination based on the facts and the law known to Appeals during the time of the hearing.", **IRM 8.22.4.2.1(1)**

"IRC 6330(c(1) does not require reliance on a particular document for verification. Verification can be made using IDRS command code TXMOD transcripts, Forms 4340, Certificate of Assessments, Payment, and Other Specified Matters, and the administrative file from Collection, unless an irregularity is identified. An irregularity may require research beyond reviewing transcripts and the administrative file." **IRM 8.22.5.4.2(5)**

During the hearing, the hearing officer must verify that; "A valid assessment was made for each tax and period on the CDP notice and the liability is correct." **IRM 8.22.5.4.2(4)**

"It is a longstanding position of this Court that a Form 4340 or a computer printout of a taxpayer's transcript of account, absent a showing of irregularity, provides sufficient verification of the taxpayer's outstanding liability to satisfy the requirement of section 6330(c)(1)that the Appeals officer conducting a CDP hearing obtain verification "that the requirements of any applicable law or administrative procedure had been met." [similarly, "... unless the taxpayer can identify an irregularity in the assessment process.", McClaine v. Commissioner, 138 TC 228, 244-245 (2012), (Citations omitted, emphasis added).

See also, Roberts v. Commissioner, 118 TC 365, aff'd per curiam 329 F3d 1224 (11th Cir.2003), held that, "Courts have concluded 'that Form 4340 provides at least presumptive evidence that a tax has been validly assessed.' *See* Davis v. Commissioner, TC 35, 40, 2000."; Davis v. Commissioner, 115 T.C. 35, 40-41 (2000) ,"in the absence of any showing of irregularity in the assessments, the Appeal Officer's reliance on Form 4340 to verify the proper assessment of tax is sufficient for the purpose of complying with sec. 6330(c)(1), I.R.C."

However, if the taxpayer shows any irregularity in the assessments set out in the CDP levy notice:

"Collection may not proceed because the assessment is invalid. Do not sustain levy as all legal requirements were not met." **IRM 8.22.5.4.2.4.2(2)**

"**Corrective Action** – Collection may not proceed because the assessment is invalid. Do not sustain levy as all legal requirements were not met. State in the determination or decision the assessment must be abated."**(IRM 8.22.5.4.2.4.2(2)**

"Independent of any issue raised or argument made by the taxpayer, section 6330(c)(1) requires the appeals officer ... to 'verify that the requirements of any applicable law or administrative procedure have been met.' Hoyle v. Commissioner, 131 T.C. – (2008)(slip op. at 5)." ...

The four basic requirements for IRC6330(c)(1) verification are: "that a proper assessment was made, that a notice and demand for payment had been made, that the tax liability remained unpaid, and that a CDP notice that informed the taxpayer of his appeal rights had been sent. ...

If the requirements of any applicable law have been met, "... then the appeals officer can proceed to consider the other collection and liability issues. But if those basic requirements have not been met, then collection cannot proceed, and the appeals officer cannot sustain the proposed collection action." Medical Practice Solutions, LLC v. Commissioner, TC Memo 2009-214, at 15-16,

I.R.C.§6330(c)(3) BALANCING TEST - Excerpts

"Under section 6330(c)(3), the determination of the Appeals Officer shall take into consideration "the issues raised under paragraph (2)" Section 6330(c)(2)(A) permits the taxpayer to "raise at the hearing any relevant issue relating to the unpaid tax' or the proposed collection action. Section 6330(c(2)(B) permits the taxpayer to "raise at the hearing challenges to the existence or amount of the underlying tax liability" under certain circumstances. The statute contemplates consideration of issues "raised" by the taxpayer at the hearing. **Thus, if an issue is never raised at the hearing, it cannot be a part of the Appeals officer's determination.** ..." Giamelli v. Commissioner, 129 TC 107, 113-114 (2007), reviewed by the Court, emphasis added.

"Underlying liability, and other section 6330(c)(2) issues, must be raised at the Appeals hearing to be properly raised before this Court. Giamelli v. Commissioner, 129 TC 107, 115 (2007); sec. 301.6330-1f)(2) Q&A-F3, Proced. & Admin. Regs." Swanton v. Commissioner, TC Memo 2010-140, at 8

"In reviewing a determination under section 6330(c)(2), including challenges to the underlying liability ,we consider only issues that the taxpayer properly raised during the section 6320/6330 hearing. Secs. ... 301.6330-1(f)(2), Q&A-F3, Proce3d. & Admin. Regs.; see Giamelli v. Commissioner, 129 TC 107, 115 (2007)." Lunnon v. Commissioner, TC Memo 2015-156, at 15..

"... in CDP cases, the Appeals hearing officer is responsible for making a determination based on the facts and the law known to Appeals during the time of the hearing.", **IRM 8.22.4.2.1(1)**

**GRANTING SUMMARY JUDGMENT - Excerpts**

" Summary judgment may be granted where there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Tax Ct. R.121*a) and (b). The party moving for summary judgment bears the burden of showing that there is no genuine dispute as to any material fact, and factual inferences will be drawn in the manner most favorable to the party opposing summary judgment. Jacklin v. Commissioner, 79 T.C. 340344 (1982)" Streiffert v. Commissioner, TC Memo 2014-62, p.11

In addition, "Ordinarily, summary judgment should not be granted in a case in which intent is an issue. [citation omitted]" Preece v. Commissioner, 95 TC 594, 610 (1990).

Also, where "... what is presented ... is a material question of fact upon which there is no agreement in the record ... the matter is not ripe for adjudication on summary judgment." Blount v. Commissioner, 66TCM 1465, 1467,TC Memo 1993-568,

**Similarly,** summary judgment is particularly inappropriate in cases in which the underlying issue is one of intent. Dellacroce v. Commissioner,43TCM1297, 1299, TC Memo 1982-243, citing Conrad v. Delta Airlines, 494 F2d 914 (7th Cir. 1974); see also, Shiosaki v. Commissioner, 61 TC 861,863-864 (1974);. Charlotte Aircraft Corporation v. Commissioner, 73TCM2283, 2286, TC Memo 1997

**STANDARD OF REVIEW OF TAX COURT DECISION TO GRANT SUMMARY JUDGMEN**

The appellate court reviews the Tax Court's interpretation, application, and conclusions of law *de novo*, and the Tax Court's grant of summary judgment by reviewing the facts and applying the same legal standards as did the Tax Court in granting summary judgment, including

whether any genuine issue of material fact existed at the time the motion was granted, viewing the facts and inferences drawn from them in the light most favorable to the non-moving party, Roberts v. Commissioner, 329 F3d 1224, 1227 (11th Cir. 2003); See also, Thrasher v. State Farm Fire & Cas. C, o., 734 F2d 637, 638-639 (11th Cir. 1984).

DISCUSSION

**Judge Morrison's Pervasive bias, the office of Appeals' Determination to Sustain the Proposed Levy, and the Tax Court Decision Affirming Appeals' Determination**

Addressing questions of bias, prejudice, or lack of impartiality, courts have held that to be disqualifying, the source of the alleged bias must be extrajudicial; it must stem from a source outside the proceeding at hand, ( the 'extrajudicial doctrine'). However, in Liteky v. United States, 510 U.S. 540 (1994), this Court said that an extrajudicial source is not the exclusive basis for establishing disqualifying bias, that rulings made in the course of the proceedings at hand have a judicial expression rather than a judicial source, and may well be based upon extrajudicial knowledge or motives. This Court also said a favorable or unfavorable predisposition can also deserve to be characterized as bias or prejudice because, even though it springs from the facts adduced or the events occurring during the current proceedings, it "is so extreme as to display clear inability to render fair judgment." (a 'pervasive bias'), and that the term 'bias' be applied "only to judicial predispositions that go beyond what is normal and acceptable. Addressing recusal motions, the Court said that opinions formed by facts or events occurring during the course of the proceedings at hand "do not constitute a basis for a bias or

partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible."

The source of Judge Morrison's bias , lack of impartiality, and determination to decide the case in favor of the IRS irrespective of the facts or law, is difficult to determine as it began almost immediately after the IRS filed its summary judgment motion, and Plotkin filed his summary judgment motion supported by the documents containing the IRS NARRATIVE describing the incorrect assessment of Plotkin's tax liability.

Applying the full body of applicable authorities, it is incontrovertible that the Office of Appeals abused its discretion by determining the IRS had met the requirements of any applicable law before issuing Plotkin a notice of intent to levy, §6330(c)(1), and also abused its discretion in determining the balancing test supported affirming the proposed levy,§6330(c)(3).

The truth of this is proven by the simple fact that neither Judge Morrison or the Court of Appeals were able to find any authority, either in the Internal Revenue Manual or in applicable cases, to refute the holdings in Medical Practice Solutions, *supra*, or Giamelli, *supra*, or IRM 8.22.5.4.2.4.2(2), or the other authorities cited herein, and had to resort to deliberate fabrications and knowing misrepresentations, actions far beyond what is "normal and acceptable", to provide some form of reasoning for their decisions, which were nothing less than the intentional and deliberate deprivation of Plotkin's constitutional right to impartial and unbiased judges and finders of fact.

The denial of due process actually began with Hearing Officer Lora Davis, who supposedly "failed to notice" information in various tax transcripts and "overlooked" documents in her file

containing the IRS NARRATIVE notation that explained that Plotkin's tax liability had been in correctly assessed, and then falsified what she knew to be an 'identity-theft' tax transcript in order to sustain the proposed levy.

IRC 6330(c)(1) requires a CDP hearing officer to verify that before issuing the proposed levy, the IRS had met the requirements of any applicable law or administrative procedure. The internal Revenue Manual requires that during the hearing, the hearing officer must verify ; "A valid assessment was made for each tax and period on the CDP notice and the liability is correct." IRM 8.22.5.4.2(4). If these requirements have not been met, the Internal Revenue Manual provides;

"**Corrective Action** – Collection may not proceed because the assessment is invalid. Do not sustain levy as all legal requirements were not met. State in the determination or decision the assessment must be abated."(IRM 8.22.5.4.2.4.2(2).

Similarly, previously considering the verification issue, the Tax Court determined that, in a CDP hearing, if the requirements of any applicable law had been met, then the hearing officer could proceed to consider the other collection and liability issues, but if such requirements had not been met, then the hearing could not continue and collection could not proceed, and the appeals officer could not sustain the proposed collection action. Medical Practice Solutions, LLC v. Commissioner, TC Memo 2009- 214, at 16,

The hearing officer is not required to use any specific documents for proper verification. It is well-established that Forms 4340 may be used for verification, and that these forms provide presumptive proof of correct assessment and demand for payment. However, this presumption

is rebutted if the taxpayer can identify any irregularity in the assessment process. McClaine v. Commissioner, 138 TC 228, 244-245 (2012), , Roberts v. Commissioner, 118 TC 365, aff'd per curiam 329 F3d 1224 (11th Cir.2003), Davis v. Commissioner, 115 T.C. 35, 40-41 (2000).

Judge Morrison was well-aware of the holding in McClaine, *supra*, and the principle of the rebuttable presumption of correctness of a 'verification' based upon review of Forms 4340 , as the decision in McClaine had been reviewed by the Tax Court, and all twelve judges, including Judge Morrison, had concurred in the opinion. It was his knowledge and understanding of its well -established principle that was the reason Judge Morrison first re-titled Plotkin's summary judgment motion and then, in his Memorandum Opinion, fabricated his fanciful 'interpretation' of Plotkin's allegation of incorrect §6330(c)(1) verification.

The NARRATIVE notation, made by the IRS, obviously proved the IRS had not met the requirements of several applicable laws and rebutted any presumption that Appeals had correctly verified proper assessment and demand for payment had been made. Further, IRS counsel had admitted that the assessments made on March 5, 2012, were incorrect, and the amounts shown on the CDP levy notice could not lawfully be collected.

However, if Plotkin had chosen not to provide a showing of irregularity in the assessment process there would be no 'rebuttal', and then Plotkin's Forms 4340 would be presumptive proof of valid assessments, and Appeals Officer Davis' reliance on them for her verification determination would not be an abuse of discretion.

In order to achieve this result, Judge Morrison first re-titled Plotkin's motion as a motion for partial summary judgment, giving credence to the idea that Plotkin's intent was to seek only a

partial judgment just to eliminate the incorrect amounts from the levy. Then, in his April 4, 2019 Memorandum Opinion Judge Morrison 'interpreted' Plotkin's multiple allegations of incorrect verification as Plotkin's intent to allege, pursuant to §6330(c)(2), the incorrect amount of the underlying tax liability, thus eliminating any 'rebuttal', and providing Judge Morrison the basis by which to grant the IRS summary judgment on the §6330(c)(1) verification issue:

"Because of the information in the Forms 4340, and because petitioner has not identified any other particular requirement of applicable law or administrative procedure that has not been met, we hold that the Office of Appeals did not abuse its discretion in performing the verification mandated by section 6330(c)(1)." (at p.46; emphasis added).

Having inventively circumvented what he knew to be proper application of the law, Judge Morrison proceeded to consideration of Appeals' determination that the 'balancing test' of §6330(c)(3) favored affirming the proposed levy.

Judge Morrison was fully knowledgeable a s to the requirements regarding summary judgment, including the requirement that all assumptions and inferences were to be made in the manner most favorable to the party opposing the motion, as he had detailed those requirements in his opinion in Streiffert v. Commissioner, TC Memo 2014-62.

Counsel for the IRS had explained to the court how easy it was to recognize as false the identity theft tax transcript Appeals Officer Davis had 'incorrectly identified' and used as the reason for her balancing test determination. Knowingly and deliberately disregarding Tax Court Rule 121 concerning summary judgment, Judge Morrison 'assumed' Appeals Officer Davis had failed to recognize the tax transcript as fraudulent, 'assumed' this was of no consequence, and

'assumed' she had actually made her 'balancing test' determination because Plotkin had not submitted a Form 433-A collection information statement.

Plotkin filed motions for reconsideration detailing more than a dozen such wrongful 'assumptions' and 'inferences', and in response, Judge Morrison vacated his Memorandum Opinion Corresponding Orders. On May 20, 2020, admitting to making improper 'inferences', Judge Morrison issued an order withdrawing portions of the Memorandum Opinion. However, he left in place his 'interpretation' of Plotkin's verification allegation, since to withdraw it would mean Appeals' verification was incorrect, and would result in the termination of the hearing and no further consideration of any other issue. Instead, Judge Morrison left in place his finding that Appeals had correctly performed its §6330(c)(1) verification, and stated that the only issue remaining for trial was Appeals' application of the balancing test.

In the May 20, 2020 order, Judge Morrison not only admitted he had wrongfully made inferences favoring the IRS, but, in further evidence of his continuing lack of impartiality and pervasive bias, actually explained that his improper inferences were correct, but just made at the wrong time in the proceedings:

> "In evaluating a summary judgment motion, the Court must draw inferences in favor of the non-moving party. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Thus, in evaluating respondent's summary judgment motion we should have drawn our inferences in favor of petitioner."
>
> "Our opinion made an inference regarding the Office of Appeals' conclusion that the proposed levy met the balancing test; we inferred that the conclusion rested independently on petitioner's failure to provide the collection-information statement. This inference is supportable".
>
> "However, such an inference would favor respondent. ... At this point in the litigation we are to draw inferences in favor of petitioner."

Subsequently, given this clear indication of a continuing bias, Plotkin filed several motions seeking Judge Morrison's recusal or removal, all of which Judge Morrison denied.

The IRS requested remand, and on February 3, 2021, given the possibility that Appeals Officer Davis, now clearly confronted with the information provided by the IRS NARRATIVE notation that the March 5, 2012 assessments were wrong, might correct her verification determination and dismiss the proposed levy action, Judge Morrison remanded the case but limited the supplemental fearing to consideration of only the balancing test:

"ORDERED that respondent's January 28, 2021 motion to remand is granted and this case is remanded to respondent's Office of Appeals for clarification and for further consideration in order to enable the Court to understand respondent's determinations in the notice of determination with respect to the balancing test."

Throughout the supplemental hearings, Plotkin requested that Appeals Officer Davis reconsider her §6330(c)(1) verification determination, but she refused to do so, stating it was outside the scope of the remand and prohibited by the applicable provisions of the IRM. On February 2, 2022, Appeals issued Plotkin a second supplemental notice of determination, which explained:

"The determination summarized below, and detailed in the attachment, is in addition to your Notice of Determination dated June 9, 2014. ...

"You were afforded a second supplemental hearing by the Order of Tax Court. The purpose of the second supplemental hearing remains the same, for further consideration in order to enable the Court to understand respondent's determinations in the notice of determination with respect to the balancing test."

Acknowledging the letters that had been sent to Plotkin during the initial 2013-2014 hearing in which she and Appeals Officer Chavez had informed Plotkin that if he wanted to propose a collection alternative or CNC status , he would need to provide a Form 433-A, and ignoring the IRM requirement that she make her determination based upon the information in the administrative file, Appeals Officer Davis wrote:

"During the original hearing you were provided multiple times, the opportunity to provide a completed 433-A CIS and you declined Ms. Chavez's and my request to assist you. ...

"On June 9, 2014 a Notice of Determination was issued, sustaining the Notice of Levy. The Notice of Levy was sustained because you did not provide a completed Form 433-A Collection Information Statement (CIS), which is required based on your total balance due the IRS, to proceed with currently not collectible status, ...or collection alternatives ..." ...

"While you are not required to request a collection alternative or Currently not Collectible (CNC) hardship status, during the balancing process I am required to make a determination on the proposed levy action. If you choose not to provide the information required ... my determination is to sustain the proposed Notice of Intent to Levy"

A trial was held at which the respondent introduced evidence that proved , as baseless, Judge Morrison's 'interpretation' of Petitioner's verification allegation. Judge Morrison refused to consider respondent's evidence, holding that all issues other than Appeals' application of the ' balancing test', including §6330(c)(1) verification, had been resolved by the April 4, 2019 Memorandum Opinion.

Following the trial, in his October 19, 2023 Memorandum Finding of Fact and Opinion, Judge Morrison confirmed that Currently Not Collectible (CNC) status was a 6330(c)(2) alternative to collection that a taxpayer may propose if he has no apparent ability to pay the tax liability, and also confirmed that Plotkin had not made any such proposal or request. Nevertheless, citing several cases and supporting IRM provisions, all involving taxpayers who

had actually requested CNC status and then failed to provide the necessary Form 433-A, he held Appeals did not abuse its discretion by refusing to place Plotkin's account in CNC status because Plotkin had not provided the Form 433-A Appeals needed to do so.

Judge Morrison made his decision despite the holding in Giamelli v. Commissioner, 129 TC 107, 113 (2007), a case he cited and quoted in his opinion in Mattina v. Commissioner, T.C. Memo 2010-127,p.8-9, and a case in which the Court examined the relationship between §6330(c)(2) and §6330(c)(3), and held:

"The statute contemplates consideration of issues 'raised' by the taxpayer at the hearing. Thus, if an issue is never raised at the hearing, it cannot be a part of the Appeals Officer's determination."

To 'sidestep' this holding of which he was obviously aware, Judge Morrison first fabricated a new form of legal 'waiver ' by which Appeals Officer Davis could 'waive' Plotkin's right of choice as confirmed by Giamelli, *supra*:

"Although petitioner did not request CNC status on remand, Appeals agreed to waive the requirement that petitioner request CNC status. ... The question therefore becomes whether Appeals erred in waiving this requirement and considering whether petitioner's account qualified for CNC status despite this requirement."

Judge Morrison then found that by exercising this new 'waiver', Appeals Officer Davis was actually considering Plotkin's argument of his inability to pay, an argument supposedly made in a motion for summary judgment filed more than 3 years after Appeals Officer Davis had made her determination, and an argument of which she was unaware. Judge Morrison deliberately misrepresented the statements in Plotkin's summary judgment motion, writing:

"As petitioner argued in his Motion for Summary Judgment on October 16, 2017, his "financial situation was such that collection of any significant portion of the amount set out in the Notice of Intent to Levy was a practical impossibility."

"Thus, by considering petitioner's qualification for CNC status, Appeals was considering the argument that petitioner made against the proposed levy (His alleged inability to pay)"

In actuality, what Plotkin had written in that motion was:

"In addition, in the course of the hearing, the Appeals Office had obtained information that indicated Petitioner's financial situation was such that collection of any significant portion of the amount set out in the Notice of Intent to Levy was a practical impossibility. (Exhibit B)" [ Exhibit B was an entry in the case activity record, dated 11/21/2013, which read "IRPTPL 2009,2010,2011 shows tp only rcvs SSI of $15,958.00. No other income. Tp not required to file 2007 thru 2012."]

Judge Morrison's continuous actions were not the result of incorrect determinations of material facts, or misapplications of applicable law. Rather, Judge Morrison's actions, beginning with his re-titling of Plotkin's motion for summary judgment, through his making and excusing of multiple 'inferences' favoring the IRS, including his fabrication of the 'interpretation' of Plotkin's true intent regarding Plotkin's allegation of incorrect verification, and culminating in his intentional misrepresentation of the statement in Plotkin's motion,, and his creation of a new 'waiver' that allowed Appeals to 'waive' Plotkin's rights in regard to the balancing test issue, evidence a deliberate plan to create support for his determination to rule in favor of the IR S, irrespective of the law he was aware of requiring a different result. Judge Morrison's actions, taken solely for the purpose of enabling him to decide the case in favor of the IRS, exhibit a deep and pervasive bias that made an impartial decision in the case impossible, and resulted in the deprivation of Plotkin's constitutional right to due process, the right to an impartial judge and 'finder of fact'.

**The 11th Circuit Court of Appeals' Abnormal and Unacceptable Actions in Affirming the Tax Court Decisiom**

On appeal, the Eleventh Circuit Court of Appeals affirmed the Tax Court's decision granting the IRS summary judgment on the §6330(c)(1) verification issue. Also unable to find any authorities contrary to the applicable case law and IRM provisions, and determined to affirm the Tax Court decision regardless, just as Judge Morrison had, the Court of Appeals resorted to the extreme actions of intentional misstatement, misrepresentation, and fabrication to provide reasons for its decision.

First, apparently in an effort to make it appear the IRS had acted quickly and responsibly instead of with gross negligence, the Court of Appeals wrote that , "Once the IRS discovered its mistake, the IRS conceded ... and abated the amount plus accrued interest." This statement is knowingly false.

The facts, deliberately omitted by the Court of Appeals from its opinion, are that the IRS made the incorrect assessments on March 5, 2012 and discovered its 'mistake' on February 3, 2013. Rather than correcting its 'mistake' by re-assessing Plotkin's tax liability correctly as it was capable of doing, on July 9, 2013, the IRS sent Plotkin a levy notice demanding payment of the knowingly incorrect amounts. It was only more than 4 years later, after Plotkin had received Appeals' administrative file, discovered both the 'overlooked' documents containing the NARRATIVE notation and the Forms 4340 containing the same information which Appeals Officer Davis had "failed to notice", and filed his summary judgment motion, that the IRS conceded its 'mistake' and belatedly abated the incorrect amounts.

As to the issue of the validity of Appeals' §6330(c)(1) determination that the IRS had met the requirements of any applicable law before sending the CDP levy notice, the Court of Appeals was unable to find any authority to refute the applicable IRM provisions and case law. Given this, the Court of Appeals first resorted to the proverbial 'straw man', and proceeded to address the issue of the incorrect assessments and their verification as though it was somehow an issue of validity of the CDP notice. Citing Horn v. Assoc., Inc. v. Commissioner, 140 TC 210, 213 (2013), a case involving mistakes as to the procedural requirements of a subject notice, the Court of Appeals wrote,, "Mistakes in a notice will not invalidate it if there is no prejudice to the taxpayer."

However, the issue in Plotkin's case is clearly not procedural mistakes in the CDP notice, since it was acknowledged by both the IRS and the Tax Court, as well as the Court of Appeals, that the CDP notice correctly set out the assessments as they had actually been made. The mistakes were in the making of the assessments and not in the notice, and the invalidity of the notice is merely the subsequent legal result of the making of the incorrect assessments.

Moving to a discussion of the second supplemental notice of determination, the Court of Appeals wroye;

" ... on remand , the Appeals Office's second supplemental notice of determination correctly excluded the erroneous amount.

"On remand, the IRS issued a second supplemental notice of determination, which included *only* the appropriate amounts as ordered by the Tax Court after the IRS conceded its mistake. ...

"Because the original notice was not so deficient as to be jurisdictionally invalid, the second supplemental notice, which was sustained by the Tax Court, adequately cured the IRS' conceded mistakes."

been made. After remand, the court, in Medical Practice Solutions, LLC, v. Commissioner, [**MPS 2**], 2010 TC Memo 98, at 17, following the law as it had initially explained in **MPS 1,** found the respondent had, on remand, provided sufficient information demonstrating proper verification and therefore sustained Appeals' determination. The court did not, in **MPS2**, withdraw, amend, modify or alter in any way, its discussion in **MPS 1** regarding the requirements for a proper verification, or the legal result of the invalidity of the levy if one was not made.

In actuality, the Court of Appeals, despite being unable to provide any supporting authority, simply decided not to correctly apply the law and, instead ,to affirm the Tax Court decision, because, although they acknowledged the assessment was incorrect, hey felt the amount by which it was incorrect should not, irrespective of what the law required, result in the invalidity of the levy.

" Plotkin argues that the mistaken inclusion of $15,073.68 in expired assessments, despite being abated by the IRS and not sustained by the Tax Court, invalidated the entire collection action because the inclusion of those amounts meant that the IRS failed to verify all legal and administrative requirements before issuing the proposed levy. But these expired assessments were not sustained by the Tax Court ... Thus, this does not invalidate the entire collection action involving over $1.8 million in over 30-year-old tax liabilities."

Thus, given their lack of willingness or ability to render a fair and correct decision as required by the law, the Court of Appeals found that the incorrect assessment of Plotkin's tax liability "...[did] not constitute an irregularity that rebuts the presumption that an account transcript provides proper verification under §6330(c)(1).", directly contradicting McClaine, *supra*, which held that any irregularity in the assessment process rebutted the presumption of correctness of transcript verification, as well as the requirement that during the hearing, the hearing officer

must verify that; "A valid assessment was made for each tax and period on the CDP notice and the liability is correct." IRM 8.22.5.4.2(4)

Turning to the issue of the balancing test, the Court of Appeals, having obviously decided to affirm the Tax Court decision irrespective of the facts or law, simply wrote that the Tax Court correctly determined Appeals' 6330(c)(3) balancing test determination was not an abuse of discretion. Both Appeals and Judge Morrison had admitted Plotkin was not required to request CNC status, or any other collection alternative, and that he had chosen not to do so. Further, the law, well-established by Giamelli, *supra*, provides that

"The statute contemplates consideration of issues 'raised' by the taxpayer at the hearing. Thus, if an issue is never raised at the hearing, it cannot be a part of the Appeals Officer's determination."

Despite this, again citing in support only cases in which the taxpayer during the hearing had actually requested either CNC status or another collection alternative and had then failed to provide the Form 433-A the hearing officer needed to consider the taxpayer's request, the Court of Appeals wrote: "Even so, the Appeals Office considered whether Plotkin should be placed in currently-not-collectible status and determined he did not qualify ..." because he had not submitted a Form 433-A which Appeals Officer Davis needed in order to determine CNC status due to the size of the liability. "As such it cannot be said that the Appeals Office abused its discretion by concluding that the balancing test was satisfied."

It is difficult to put a label on the source of the actions of the Court of Appeals; were they judicial or extrajudicial, were they evidence of pervasive bias, or were they motivated by some

outside unidentifiable source. Whatever the source, to create false 'facts' in order to support a decision unsupportable by any other means cannot possibly be either normal or acceptable, and must, instead, constitute an impermissible lack of impartiality which resulted in the denial of Plotkin's constitutional right to due process.

**The Court of Appeals' decision as to Judge Morrison's Bias**

Despite the mandated requirement of §6330(c)(1), given what it saw as the disparity in the relative sizes of the unlawful amount included in the assessments and the total tax liability, the Court of Appeals refused to apply what it knew to be the law simply because it disapproved of its application in Plotkin's case; a textbook case of bias and denial of due process.

As for Plotkin's allegation that Judge Morrison's decision was a result of his bias, the Court of Appeals disagreed. Although there could be no more obvious examples of pervasive bias and lack of impartiality than the actions and statements of Judge Morrison as set forth previously. the Court of Appeals determined that the Tax Court had properly reviewed and determined the Office of Appeals' verification was correct, as was their application of the balancing test, and, " Thus, in both events, Plotkin [had established] no error or bias in the judge's rulings."

In other words, 'even if the Tax Court decision was the result of bias, if we affirm that decision as a result of our bias, then neither of us were biased; an interesting form of judicial circular reasoning.

**JUDGE MORRISON'S LACK OF AUTHORITY OR JURISDICTION**

In accordance with 26 U.S.C. §7443, Judge Morrison was nominated by the President, confirmed by the Senate, and assumed his office as a judge of the U.S. Tax Court on August 28, 2008, to serve a term of 15 years, ending on August 27, 2023.

After August 28, 2023, Judge Morrison decided a number of motions in Plotkin's case, signing each, "Morrison, Judge". Judge Morrison then issued his Memorandum Finding of Facts and Opinion on October 19, 2023, and issued his decision in Plotkin's case on October 24, 2023. Although the record is devoid of any information relating to this situation, Judge Morrison may have been appointed, pursuant to 26 U.S.C. §7447, as a Senior Judge by the chief judge of the Tax Court, who may have asked him to continue presiding over Plotkin's case.

26 U.S.C. 7443 specifically provides that there are to be 13 judges of the U.S. Tax Court, that each is to be nominated by the President of the United States and confirmed by the U.S. Senate to serve for a term of 15 years.

26 U.S.C. 7447(c) gives the chief judge of the Tax Court the authority, subject to certain requirements, to appoint as a Senior Judge former judges whose terms have expired, including judges who have notified the President of the United States they would like to serve an additional term, but whom the President has refused to re-nominate.

26 U.S.C. §7447(c)(2) provides that any act, or failure to act, by a Senior Judge , "... shall have the same force and effect as if it were the act (or failure to act) of a judge of the Tax Court ..." except that they are not " counted as a judge of the Tax Court for purposes of section 7443(a)".

At present, there are 18 Tax Court Judges , and 13Tax Court Senior Judges.

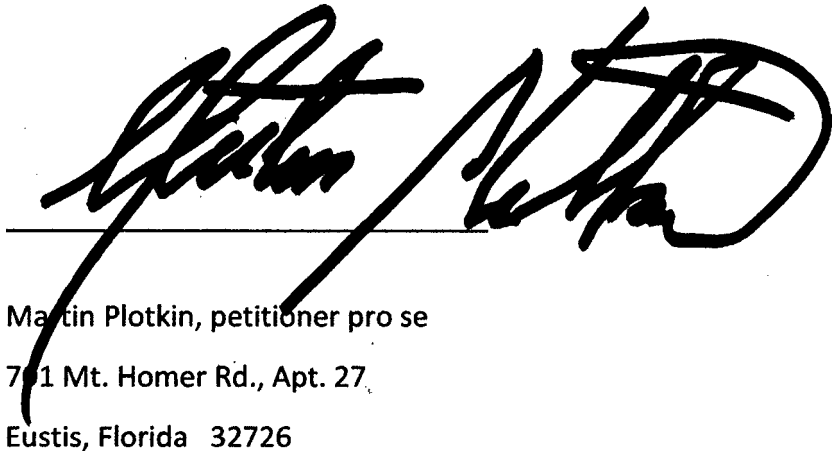
The conflict between these two statutes is both obvious and unreconcilable; one requires Tax Court judges to be nominated by the President and confirmed by the Senate, while the other empowers the chief judge of the Tax Court to appoint as judges those former judges who have wanted to serve an additional term but whom the President has specifically refused to re-nominate.

The Court of Appeals took the position that this issue was settled in Byers v. Commissioner, 740 F3d 668, 679 *D.C. Cir. 2014); however, the issue in that case was not the conflict between the provisions of two separate statutes, but was whether the appointment of Senior Judges by the chief judge of the Tax Court violated the 'appointment's clause' of the U.S. Constitution.

This Court, in Freytag v. Commissioner, 111 SCt. 2631, 501 US 868, reviewed 26 U.S.C 7447A, which gives the chief judge of the Tax Court the authority to appoint Special Trial Judges who can be called upon to preside over Tax Court cases, and held that the statute at issue was a valid exercise of Congressional authority. However, unlike Senior Judges, Special Trial Judges are not the equivalent of regular Tax Court judges, as there are limitations as to the type of cases they may hear, and in other cases their decisions are subject to review and approval by a regular tax court judge, and subject to objection by either litigant.

Given the major difference in the statutory authority of a Senior Judge and a Special Trial Judge, the holding in Freytag, *supra*, would not appear to necessarily apply to the question of the conflict between 26 U.S.C. 7443 and 26 U.S.C. 7447, a conflict of sufficient concern as to warrant resolution by this Court.

Respectfully submitted this 7 day of August, 2025. By:



Martin Plotkin, petitioner pro se

711 Mt. Homer Rd., Apt. 27

Eustis, Florida 32726

(352) 589-9400