DOCKET NO._____

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Martin G. Plotkin

Petitioner, pro se

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In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-10667

MARTIN G. PLOTKIN,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review of a Decision of the
U.S. Tax Court
Agency No. 16224-14L

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: May 15, 2025

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: July 7, 2025

[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-10667

Non-Argument Calendar

MARTIN G. PLOTKIN,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review of a Decision of the
U.S. Tax Court
Agency No. 16224-14L

Before LAGOA, HULL, and WILSON, Circuit Judges.

PER CURIAM:

Martin Plotkin, proceeding *pro se*, petitions for review of the United States Tax Court's final order and memorandum opinion that, taken together, sustained the Internal Revenue Service's ("IRS") notice of intent to levy to collect unpaid federal income tax liabilities totaling approximately $1.8 million for tax years 1991 to 1995.

For over a decade, the IRS has attempted to collect Plotkin's tax deficiencies reflected in an approximately $1.8 million final judgment. As we presume the parties are familiar with the facts and procedural history of Plotkin's extensive tax proceedings, we will recount only the facts and procedural history necessary to our ruling below, which affirms the Tax Court's decision sustaining the IRS's notice of intent to levy.

I. BACKGROUND

A. Plotkin's Underlying Tax Liability

Plotkin is a former attorney and graduate of University of Pennsylvania's Wharton School. *See Plotkin v. Comm'r of IRS*, 498 F. App'x 954, 955-958 (11th Cir. 2012). In 1980, Plotkin purchased a controlling interest in a company that owned and operated nursing homes. *Id.* at 955-56. Plotkin received substantial income from one nursing home in particular, but he failed to report that income. *Id.* at 957-58.

In 1999, Plotkin was criminally convicted of three counts of willfully making and subscribing false income tax returns under the Internal Revenue Code ("the Code") § 7206(1). *Id.* The district court found that Plotkin willfully and falsely reported his income for the years 1991, 1992, and 1993 and sentenced him to five years of probation. *Id.* at 958.

Subsequently, in 2008, the IRS issued Plotkin a notice of deficiency for tax years 1991 through 1995. The IRS determined that (1) Plotkin failed to report these amounts of self-employment income: $302,319 in 1991; $172,081 in 1992; $138,490 in 1993; $135,611 in 1994; and $805,246 in 1995, and (2) Plotkin owed a total income tax deficiency of $589,276 for those five years, plus "estimated tax additions" and "fraud penalties." *Id.*; *Plotkin v. Comm'r*, 102 T.C.M. (CCH) 450, *19 (2011).

Plotkin petitioned the Tax Court for a redetermination of his tax deficiencies, and after a trial, the Tax Court entered judgment in favor of the IRS. *Plotkin*, 498 F. App'x at 958-59. In 2012, this Court affirmed the Tax Court's decision. *Id.* at 959-61. The IRS's attempts to collect began but became bogged down in protracted challenges by Plotkin.

B. Collection Proceedings in 2013

Starting in July 2013, the IRS issued Plotkin a letter notifying him of its intent to collect the assessed tax liabilities by levy. The notice indicated that Plotkin's unpaid tax liabilities now totaled $1,876,431.28.

The next month, Plotkin requested a collection due process hearing, 26 U.S.C. § 6330(b), which was conducted through correspondence. Plotkin's reason for the hearing request was, *inter alia*, "Notice invalid and amounts shown incorrect[.]"

The IRS asked Plotkin to complete a standard Form 433-A Collection Information Statement in order to balance his financial condition with its need to collect the money by levy, *see id.* § 6330(c)(3)(C)[1], but Plotkin did not complete the form.

The IRS Office of Appeals ("Appeals Office") advised Plotkin that it could not consider a challenge to his underlying tax liabilities because he previously challenged and lost in the Tax Court and in this Court. The Appeals Office, however, offered three times "to consider alternative collection methods such as currently not collectible, installment agreement or offer in compromise" if Plotkin would provide the necessary collection-information statement, but Plotkin did not submit the statement.

The Appeals Office sustained the collection determination. On June 9, 2014, the Appeals Office issued a notice of determination sustaining the proposed levy to collect Plotkin's income tax liabilities for tax years 1991 through 1995. The notice stated that all statutory requirements to impose a levy were met

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[1] Code § 6330(c)(3)(C)'s balancing test requires the appeals officer to consider "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." 26 U.S.C. § 6330(c)(3)(C).

and also noted that Plotkin challenged only the fact of his liability and "did not cooperate in the determination of an alternative to enforced collections."

C. Plotkin's Petition for Tax Court Review

In July 2014, Plotkin petitioned the Tax Court to review the Appeals Office's determination sustaining the notice of intent to levy. Both Plotkin and the IRS moved for summary judgment.

In its motion, the IRS conceded that $15,073.68 was erroneously reinstated to Plotkin's total tax liabilities, as this amount was based on tax assessments from tax years 1991 through 1993 that previously were written-off as uncollectible because the ten years to collect those assessed tax liabilities expired in 2004. The IRS also explained that it would not seek to recover $6,000 that it erroneously credited to Plotkin for the 1995 tax year. Except for those two adjustments, the IRS argued that the Tax Court could sustain the levy as to the underlying tax liabilities.

The IRS also asserted that the Appeals Office did not abuse its discretion in sustaining the levy based on its finding that the levy balanced efficient collection with Plotkin's concern that collection be no more intrusive than necessary, *see* Code § 6330(c)(3)(C), because: (1) entries in his case activity record suggested that Plotkin had income beyond his Social Security benefits and potentially could pay some of the balance, and (2) he refused to provide financial information in a collection statement form that might suggest otherwise.

D. Tax Court's Summary Judgment Order

In an order granting partial summary judgment to the IRS and partial summary judgment to Plotkin, the Tax Court sustained the $1.8 million proposed levy with the exception of the following liabilities that the IRS conceded: (1) the $15,073.68 write-off amount that was improperly reinstated, and (2) the liability for the 1995 deficiency amounting to $6,000 (the difference between $66,031 and $60,031 for tax year 1995). The Tax Court also determined that Plotkin's failure to provide a financial statement form meant that he could not request a collection alternative based on income. And the Tax Court concluded that the Appeals Office complied with § 6330(c)(1) and properly verified that all legal and administrative requirements were met.

E. Plotkin's Motion for Reconsideration of the Tax Court's Summary Judgment Order

Plotkin moved for reconsideration on several grounds.

The Tax Court reaffirmed its summary judgment decision except as to the balancing test. Specifically, the Tax Court determined that, in drawing all inferences in Plotkin's favor, it should not have inferred that the reasoning of the Appeals Office regarding the § 6330(c)(3)(C) balancing test hinged solely on Plotkin's failure to provide the requested financial information and not perhaps in part on the possibility that Plotkin received some income beyond Social Security benefits.

The Tax Court thus withdrew the portions of its summary judgment order regarding the balancing test and remanded the

case to the Appeals Office for "clarification and further consideration in order to enable the Court to understand [the IRS's] determinations in the notice of determination with respect to the balancing test." The Tax Court explained that, if the parties agreed that a trial was not needed on this issue, it should advise the Tax Court accordingly.

F. Appeals Office Ruling on Remand

On remand, the Appeals Office issued a second supplemental notice of determination sustaining the levy, except for the minor abated amounts. The IRS and Plotkin agreed that Plotkin had not requested a collection alternative. Nonetheless, the IRS on its own attempted to determine if the levy should be stopped based on Plotkin's financial condition. Yet Plotkin again refused to provide his financial information.

The Appeals Office's final notice stated that although the Internal Revenue Manual permitted a taxpayer to be placed in currently-not-collectible status even if he did not submit a collection information statement, that exception did not apply to Plotkin because his balance exceeded $10,000. This notice also explained that because Plotkin denied several requests for a collection information statement, the Appeals Office could not assist him and was left with "no other option" but to sustain the levy.

Specifically, the Appeals Office's final notice explained to Plotkin why his refusal to complete the collection information form foreclosed any collection alternative based on his income:

> During the Supplemental Hearing, [the Appeals Office] provided [Plotkin] multiple Internal Revenue Manual (IRM) references, reflecting a completed Form 433-A, Collection Information Statement (CIS) is required to proceed with a resolution as to the proposed levy action by the IRS. There is an exception as indicated in IRM 5.19.17.2.4.1, if the reported income is social security only, however the IRM reference is only in regard to balances due of $10,000 or less the IRS. Therefore, you do not qualify. . . .
>
> Based on this, [the Appeals Office] ha[s] determined due to your refusal to provide a completed Form [] CIS, [the Office is] unable to assist you with a resolution as to the levy action proposed by the IRS. The proposed levy action is sustained.

G. Tax Court Post-Remand Trial

After the remand and the Appeals Office's second supplemental notice of determination sustaining the levy, the Tax Court again took up the disputed issue whether the Appeals Office abused its discretion in concluding that the proposed levy balanced the need for the efficient collection of tax with Plotkin's legitimate concern that any collection be no more intrusive than necessary. This required fact-finding regarding whether the Appeals Office's balancing-test determination hinged "independently on [Plotkin's] failure to provide a collection-information statement," or whether its determination also relied on entries in the IRS case activity

record suggesting that Plotkin received income other than Social Security, such that he could pay some of his balance.

But then, in a pretrial memorandum, Plotkin represented that "[n]o stipulations are necessary as all of the facts are undisputed." Plotkin did not challenge the $1.8 million judgment less the IRS's abated $15,000 in expired assessments. The Tax Court admitted into evidence the declaration and exhibits of Appeals Officer Lora Davis regarding Plotkin's tax liabilities and case activity records.

On December 16, 2022, the Tax Court held a one-day videoconference trial on the sole issue whether Plotkin's only source of income was social security and, if so, whether the Appeals Office abused its discretion in conducting the balancing test. Plotkin did not attend the trial.

On October 24, 2023, the Tax Court determined that (1) the Appeals Office did not err on remand by not placing Plotkin in currently-not-collectible status because Plotkin refused to submit a collection information statement; (2) the Appeals Office did not err by considering Plotkin's refusal to submit a collection information statement when it was conducting the § 6330(c)(3)(C) balancing test because the Appeals Office had no way to consider Plotkin's financial circumstances; and (3) the original notice of determination, including the abatements from the IRS's two conceded mistakes, should be sustained.

H. Plotkin's Motions as to the Tax Court Judge

Plotkin then moved for the decision to be withdrawn because the Tax Court judge lacked authority to hear the case because his term expired on August 28, 2023, just before the order was entered on October 24, 2023. Plotkin filed several more motions to this effect, all of which were denied.

Plotkin timely appealed.

II. STANDARDS OF REVIEW

We review *de novo* the Tax Court's grant of summary judgment, its applications of statutes, and its conclusions of law. *Gregory v. Comm'r*, 69 F.4th 762, 765 (11th Cir. 2023). We review the facts and apply the same legal standards as the Tax Court. *Roberts v. Comm'r*, 329 F.3d 1224, 1227 (11th Cir. 2003).

III. DISCUSSION

A. The Tax Court Correctly Concluded that the Appeals Office Satisfied § 6330(c)(1)'s Legal and Procedural Requirements

Plotkin first argues *pro se* that the Appeals Office violated § 6330(c)(1) by failing to verify that all legal and administrative requirements were met based on the assessment's inclusion of "amounts expired and no longer legally collectible." Plotkin argues that the inclusion of these expired amounts violated statutory requirements and should have resulted in a complete termination of the collection due process hearing because the levy could not be sustained. We disagree.

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 as part of Plotkin's liability. Thus, this does not invalidate the entire collection action involving over $1.8 million in over 30-year-old tax liabilities. This Court affirmed the Tax Court's determination of Plotkin's tax liabilities in 2012. *See Plotkin*, 498 F. App'x at 955, 961. Once the IRS discovered its mistake, the IRS conceded that these amounts were improperly reinstated and abated that amount plus accrued interest. As a result, the Tax Court sustained the collection by levy of only the remaining amount, which Plotkin undisputedly owes.

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. *See Kelby v. Comm'r*, 130 T.C. 79, 86 (2008) (explaining that, when "a case is remanded to [the Appeals Office] and supplemental determinations are issued, the position of the Commissioner that we review is the position taken in the last supplemental determination"). 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's conceded mistakes. *See Ginsberg v. Comm'r*, 130 T.C. 88, 92 (2008); *see also John C. Hom & Assocs., Inc. v. Comm'r*, 140 T.C. 210, 213

(2013) ("Mistakes in a notice will not invalidate it if there is no prejudice to the taxpayer."). We thus reject Plotkin's argument that none of his tax liabilities can be collected because of the initial erroneous reinstatement of the $15,073.68 amount.

Insofar as Plotkin argues that the Appeals Office failed to satisfy the statutory verification requirement in § 6330(c)(1), we also disagree. Plotkin relies on the Tax Court's decision in *Medical Practice Solutions v. Commissioner* to assert that an error in the verification prohibits the collection action from proceeding. 98 T.C.M. (CCH) 242, at *5 (2009). But in *Medical Practice Solutions*, the Tax Court concluded that the hearing record failed to establish that all requirements were met and remanded the case to the Appeals Office to complete the verification process, which it did. *See id.* at *8. Notably, the Tax Court did not invalidate the collection action. *See id.*

In sum, the Tax Court correctly sustained only the tax assessment less the erroneous amount that the IRS abated, and on remand, the Appeals Office's second supplemental notice of determination correctly excluded that erroneous amount. Further, the erroneous amount's initial inclusion does not constitute an irregularity that rebuts the presumption that an account transcript provides proper verification under § 6330(c)(1).

B. The Tax Court Did Not Err in Determining that the Levy Satisfied § 6330(c)(3)(C)'s Balancing Test

Plotkin argues that the Appeals Office abused its discretion by basing its determination—that the levy satisfied

§ 6330(c)(3)(C)'s balancing test—on his failure to provide a collection information statement containing his financial information. Plotkin asserts that he is only required to submit a collection information statement if he requests a collection alternative of currently-not-collectible status, which he did not request. As a result, he argues, the Appeals Office improperly considered an issue that he did not raise.

Section 6330(c)(3) provides that "[i]n the case of *any* hearing conducted under this section," the appeals officer's determination "*shall* take into consideration," among other things, "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." 26 U.S.C. § 6330(c)(3)(C) (emphases added). This requirement is known as the "§ 6330(c)(3)(C) balancing test."

Here, 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 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. Plotkin admits that he never requested a collection alternative and does not dispute that he submitted no financial information for the Appeals Office's consideration.

Even so, the Appeals Office considered whether Plotkin should be placed in currently-not-collectible status and determined that he did not qualify for that status in the light of his repeated refusal to submit the necessary financial information and his failure to meet the criteria for an exception based on the size of the balance due. As such, it cannot be said that the Appeals Office abused its discretion by concluding that the balancing test was satisfied. *See, e.g.*, *Sapp v. Comm'r*, 91 T.C.M. (CCH) 1177, at *9 (2006) (concluding that there was no abuse of discretion in failing to consider collection alternatives in sustaining a levy where the petitioner ignored requests for a collection information statement); *Cosio v. Comm'r*, 123 T.C.M. 1109, at *5 (2022) (finding no abuse of discretion in the appeals officer's concluding that the balancing test was satisfied after the petitioners failed to respond to requests for financial information).

C. Plotkin's Due Process and Jurisdiction Arguments Regarding the Tax Court Judge Lack Merit

Plotkin challenges the Tax Court judge directly on two bases: (1) that the Tax Court judge intended to deny him due process by misinterpreting his argument and by having "no intention of presiding over this case in an impartial and unbiased manner," and (2) that the Tax Court lacked jurisdiction because the judge's term expired before the proceedings concluded. We disagree with both of Plotkin's arguments.

First, Plotkin fails to establish that the Tax Court judge denied him due process. We are satisfied that the record reveals

the Tax Court judge properly reviewed both the Appeals Office's verification of the tax liabilities, as discussed above, as well as the amounts included in Plotkin's tax liabilities, as shown by the Tax Court sustaining the levy but expressly excluding the written-off amounts that were erroneously reinstated. Thus, in both events, Plotkin establishes no error or bias in the judge's rulings.

Second, Plotkin's challenge to the jurisdiction of the Tax Court lacks merit. The Tax Court judge's term of active service expired on August 28, 2023, and Congress authorized the chief judge of the Tax Court to recall a judge whose term has expired "to perform such judicial duties with the Tax Court as may be requested." Code § 7447(c). Because a "recalled" or "senior" judge is empowered with the same authority as "a judge of the Tax Court," Plotkin identifies no jurisdictional or other defect in the authority of the Tax Court to adjudicate his case. *Id.*; *see also Byers v. Comm'r*, 740 F.3d 668, 679 (D.C. Cir. 2014) (concluding that Congress's statutory authorization of senior Tax Court judges was "plainly constitutional").[2]

IV. CONCLUSION

We affirm the decision of the Tax Court sustaining the IRS's notice of intent to levy to collect Plotkin's unpaid federal income tax liabilities totaling approximately $1.8 million for tax years 1991 to 1995.

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[2] Plotkin's brief makes other arguments, but none have merit and none warrant further discussion.

AFFIRMED.

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United States Tax Court

Washington, DC 20217

MARTIN G. PLOTKIN,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 16224-14L

ORDER AND DECISION

Pursuant to the determination of the Court as set forth in its Memorandum Opinion (T.C. Memo. 2019-27), filed April 4, 2019, as modified by its Order filed May 20, 2020, and as set forth in Memorandum Opinion (T.C. Memo. 2023-125), filed October 19, 2023, it is

ORDERED that respondent's October 12, 2017 motion for summary judgment is granted in part and denied in part. It is further

ORDERED that petitioner's October 16, 2017 motion for partial summary judgment is denied. It is further

ORDERED that petitioner's November 8, 2017 motion for partial summary judgment, as amended on November 13, 2017, is denied as moot. It is further

ORDERED that petitioner's February 27, 2018 motion for summary judgment, as supplemented on April 2, 2018, is granted in part and denied in part. It is further

ORDERED and DECIDED that the determination set forth in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, issued to petitioner on June 9, 2014, as supplemented on July 29, 2021, and February 2, 2022, for petitioner's income tax liabilities for the taxable years 1991, 1992, 1993, 1994, and 1995, upon which this case is based, is hereby sustained except for the following: (1) the self-reported tax liabilities and related interest and additions to tax for 1991 in the amount of $4,823.18, for 1992 in the amount of $7,590.38, and for 1993 in the amount of $2,660.12 (these total amounts are itemized on page 6 of Memorandum Opinion (T.C. Memo. 2019-27), and (2) $6,000 of the $66,031 liability for the 1995 deficiency (the difference between $66,031 and $60,031).

(Signed) Richard T. Morrison
Judge

Entered and Served 10/24/23

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United States Tax Court

T.C. Memo. 2023-125

MARTIN G. PLOTKIN,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 16224-14L. Filed October 19, 2023.

Martin G. Plotkin, pro se.

Miriam C. Dillard and *A. Gary Begun*, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

MORRISON, *Judge*: This is a collection due process (CDP) case brought by petitioner, Martin G. Plotkin, pursuant to section 6330(d)[1] for review of a determination by the Internal Revenue Service (IRS) Office of Appeals (Appeals) sustaining a notice of intent to levy to collect unpaid federal income tax liabilities for the tax years 1991–95.

On April 4, 2019, we issued a Memorandum Opinion (the April 2019 Memorandum Opinion), *Plotkin v. Commissioner*, T.C. Memo. 2019-27, which resolved all issues in the case. The April 2019 Memorandum Opinion agreed in part with petitioner's Motion for Summary Judgment dated February 27, 2018, as supplemented on April 2, 2018, as to his reported tax liabilities (and related interest and additions to tax) for 1991, 1992, and 1993. *Id.* at *33. We opined that the determination of Appeals should not be sustained as to the collection

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[1] Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, Title 26 U.S.C., in effect at all relevant times.

Served 10/19/23

[*2] of these amounts. *Id.* at *57. In the same April 2019 Memorandum Opinion, we opined that the determination should not be sustained as to the collection of a $6,000 amount related to 1995. *Id.* at *8, *57. Neither party has specifically moved for summary judgment as to the collection of this $6,000 amount, but neither party denied that the determination of Appeals was erroneous as to this amount. Besides these two matters, we opined that the determination should be sustained, including the portion finding that the proposed levy balanced the need for efficient collection with the legitimate interest of petitioner that the collection action be no more intrusive than necessary. *Id.* at *57. We correspondingly explained that partial summary judgment should be granted to respondent. *Id.* However, on May 20, 2020, we issued an Order withdrawing these portions of the April 2019 Memorandum Opinion sustaining the determination to the extent that it concluded that the proposed levy balanced the need for efficient collection with the legitimate interest of petitioner that the collection action be no more intrusive than necessary. On February 3, 2021, we remanded the case to Appeals to further consider this balancing test. On July 29, 2021, and February 2, 2022, Appeals issued supplemental notices of determination determining that the proposed levy balanced the need for efficient collection with the legitimate interest of petitioner that the collection action be no more intrusive than necessary. In this Opinion, we hold that this balancing determination was not an abuse of discretion.

FINDINGS OF FACT

Petitioner was a resident of Florida when he filed his Petition. *Plotkin*, T.C. Memo. 2019-27, at *5.

In 2004 three years of income tax of petitioner, and related additions to tax and interest, were rendered uncollectible by the expiration of the ten-year period for respondent to collect assessed tax liabilities. § 6502(a)(1); *Plotkin*, T.C. Memo. 2019-27, at *6. The assessed amounts rendered uncollectible were $4,823.18 for 1991, $7,590.38 for 1992, and $2,660.12 for 1993. *Plotkin*, T.C. Memo. 2019-27, at *6.

On July 29, 2013, respondent issued a notice of intent to levy to petitioner. *Id.* at *10. The notice stated that respondent intended to levy to collect $1,876,431.28 of liabilities for the tax years 1991–95. *Id.* at *11. This amount included the amounts that had been rendered

[*3] uncollectible in 2004 by the expiration of the ten-year period for collecting assessed tax liabilities. *Id.*

The notice of intent to levy gave petitioner the right to request a CDP hearing with Appeals. *Id.* at *10. Petitioner requested and received such a hearing. *Id.* at *11–12.

On June 9, 2014, Appeals issued a notice of determination sustaining the levy. *Id.* at *20. The notice of determination did not acknowledge that the levy was intended in part to collect the amounts rendered uncollectible in 2004 by the expiration of the ten-year period for collecting assessed tax liabilities. The notice of determination stated that because petitioner had failed to give Appeals the financial information it had requested during the hearing, the proposed levy balanced the need for efficient collection with petitioner's concern that any collection action be no more intrusive than necessary. *Id.* at *21. This last statement (that petitioner had to give Appeals the financial information it requested for it to make the balancing determination in favor of petitioner) might be viewed as inconsistent with four case-activity entries that had earlier been made by the Appeals officer who handled the CDP hearing:

- First, a case-activity entry on November 15, 2013, stated that the officer had reviewed respondent's records of prior returns and that these returns showed that petitioner's only income was Social Security benefits. *Id.* at *13, *26.

- Second, a case-activity entry on April 14, 2014, suggested that the officer had reviewed records of prior returns, determined that petitioner's only income was Social Security benefits, and determined that petitioner qualified for alternatives to collection.[2]

- Third, a case-activity entry on the same day, April 14, 2014, suggested that the officer had reviewed records of prior returns, determined that petitioner's only income was Social Security benefits, and determined that petitioner could not pay the tax sought to be collected.[3]

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[2] Although this entry was discussed in the April 2019 Memorandum Opinion, these aspects of the entry were not discussed.

[3] This entry was not discussed in the April 2019 Memorandum Opinion.

[*4] • Fourth, a case-activity entry on June 4, 2014, stated that the officer reviewed records of prior returns to see whether petitioner would be in a hardship situation, that one of the returns reported that petitioner had earned $28,510 of dividend income, that petitioner might be able to pay the tax sought to be collected, and that a notice of determination would be issued. *Id.* at *20.

Petitioner timely filed his Tax Court Petition for review of the June 9, 2014, notice of determination. *Id.* at *22.

On October 12, 2017, respondent moved for summary judgment. *Id.* at *23. In that Motion, respondent contended that Appeals did not abuse its discretion in sustaining the levy.

On October 16, 2017, petitioner moved for partial summary judgment. *Id.* at *25. One of his theories was that it was impossible for respondent to collect any significant portion of the liabilities because Appeals had determined on November 15, 2013, that he had no income other than Social Security income. *Id.* at *26. He explained in his Motion that 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." Because the Motion requested that the Court set aside the notice of determination, it is unclear why the Motion was titled a Motion for "Partial" Summary Judgment.

On November 8, 2017, petitioner moved for partial summary judgment. *Id.* In this Motion he argued that the notice of determination erred because the proposed levy involved an attempt to collect the amounts rendered uncollectible in 2004 by the expiration of the ten-year period for collecting assessed tax liabilities. *Id.* at *26, *27 & n.6. The Motion requested that the Court "reverse" the notice of determination. It is therefore unclear why this Motion was titled a Motion for "Partial" Summary Judgment.

On November 15, 2017, petitioner filed a Response to respondent's October 12, 2017 Motion for Summary Judgment. *Id.* at *27. Reprising his Motion for Partial Summary Judgment of November 8, 2017, petitioner argued that the proposed levy was an attempt to collect the amounts rendered uncollectible in 2004 by the expiration of the ten-year period for collecting assessed tax liabilities. *Id.* at *28. Reiterating the theory he had asserted in his Motion for Partial Summary Judgment of October 16, 2017, petitioner contended that

[*5] Appeals erred in concluding that the balancing test of section 6330(c)(3)(C) was met because Appeals had determined that petitioner's income consisted solely of Social Security benefits. *Plotkin*, T.C. Memo. 2019-27, at *28. He explained that the balancing test required Appeals to determine whether "a taxpayer is financially able to pay an amount due." Petitioner made other arguments, including that Appeals failed to perform the verification required by section 6330(c)(1). *Plotkin*, T.C. Memo. 2019-27, at *28–29, *46.

On February 5, 2018, respondent filed a Reply to petitioner's November 15, 2017, Response. *Id.* at *29. Among other things, respondent addressed petitioner's theory that Appeals erred in concluding the balancing test of section 6330(c)(3)(C) was met because Appeals had determined that petitioner's income consisted solely of Social Security benefits. *Plotkin*, T.C. Memo. 2019-27, at *31. Respondent gave two reasons why Appeals did not abuse its discretion in determining that the balancing test had been met: first, the Appeals officer's case-activity entry of June 4, 2014, stated that prior returns showed that petitioner might be able to pay; second, petitioner had failed to submit the requested financial information to Appeals. *Id.*

On February 27, 2018, petitioner filed a Motion for Summary Judgment. *Id.* at *33. In the Motion petitioner stated that, because respondent had admitted that reversals of writeoffs on March 5, 2012, were improper, thus reinstating the amounts that had been rendered uncollectible in 2004 by the expiration of the ten-year period for collecting assessed tax liabilities, Appeals had failed to "verify that all legal and administrative requirements have been met." *Id.* It is unclear why petitioner divided his Motion for Summary Judgment into multiple separate Motions.

On April 4, 2019, the Court issued the April 2019 Memorandum Opinion resolving the parties' various Motions for Summary Judgment. *Plotkin v. Commissioner*, T.C. Memo. 2019-27.

The April 2019 Memorandum Opinion rejected petitioner's argument regarding the balancing test. *Id.* at *53. We recognized that the Appeals officer's case-activity entry of June 4, 2014, which stated that prior returns showed that petitioner might be able to pay, relied upon a false return filed by a third party. *Id.* However, we held that the analysis of the balancing test by Appeals hinged on petitioner's failure to submit the requested financial information, not on the information in the prior returns. *Id.*

[*6] As to petitioner's argument that the proposed levy was an attempt to collect the amounts rendered uncollectible in 2004 by the expiration of the ten-year period for collecting assessed tax liabilities, the April 2019 Memorandum Opinion held that the uncollectibility of these amounts did not mean that the proposed levy was defective as to the entire liability. *Id.* at *55–57. We also observed that of a deficiency amount that had been determined for tax year 1995 respondent had failed to assess $6,000 on account of a typographical error. *Id.* at *8. Neither party has specifically moved for summary judgment as to the collection of this $6,000 amount, but neither party denies that Appeals' notice of determination was erroneous as to collection of this amount.

The April 2019 Memorandum Opinion held that Appeals did not abuse its discretion in performing the verification mandated by section 6330(c)(1), except as to its failure to verify whether the ten-year period for collecting the assessed liabilities for 1991–93 was still open. *Plotkin*, T.C. Memo. 2019-17, at *44–46.

The April 2019 Memorandum Opinion held that the notice of determination should be sustained except as to (1) the amounts rendered uncollectible in 2004 by the expiration of the ten-year period for collecting assessed tax liabilities and (2) the $6,000 amount. *Id.* at *8, *57.

On July 1, 2019, the IRS Office of Appeals was renamed the IRS Independent Office of Appeals. *See* Taxpayer First Act, Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019).

On May 20, 2020, we reconsidered our April 2019 Memorandum Opinion. We did so on Motion of petitioner, who argued that Appeals had obtained information that his financial situation was such that it was impossible to collect any significant portion of the liabilities, and that as a result, the notice of determination erred in concluding that the balancing test of section 6330(c)(3)(C) had been satisfied. In particular, petitioner argued that the determination by Appeals regarding the balancing test was inconsistent with the proposition that "[p]etitioner's only income came from his Social Security Benefits, which were insufficient to provide for any payment of the liability." We agreed with petitioner's argument inasmuch as we withdrew the portions of the April 2019 Memorandum Opinion holding that Appeals did not err in applying the balancing test of section 6330(c)(3)(C) because of petitioner's failure to submit the requested financial information. Our rationale for withdrawing those portions of the April 2019 Memorandum

[*7] Opinion was that in evaluating respondent's Motion for Summary Judgment, we should draw inferences in favor of petitioner, and that consequently we should not infer that the reasoning of Appeals hinged independently on petitioner's failure to provide the requested financial information. *See Naftel v. Commissioner*, 85 T.C. 527, 529 (1985) (stating that resolving a motion for summary judgment, the Court must draw inferences in favor of the nonmoving party). We left unchanged the other portions of the April 2019 Memorandum Opinion. We stated that the only unresolved issue in the case was whether Appeals determined that petitioner's income consisted solely of Social Security benefits and if so, whether this meant that Appeals abused its discretion in concluding that the proposed levy balanced the need for the efficient collection of tax with petitioner's legitimate concern that any collection action be no more intrusive than necessary.

On January 28, 2021, respondent moved to have the Court remand the case to Appeals "with respect to the one unresolved issue in the instant case—the reasoning behind Appeals' conclusion on the balancing test of I.R.C. § 6330(c)(3)(C)." The Motion stated that petitioner had told respondent that he was willing to consider remand if he had the opportunity to participate in the remand proceeding.

On February 3, 2021, the Court remanded the case to Appeals "for clarification and for further consideration . . . with respect to the balancing test." The Court ordered Appeals to hold a further hearing no later than April 30, 2021. The Court did not initially set a deadline for Appeals to issue a supplemental notice of determination.

On July 7, 2021, the Court ordered Appeals to issue a supplemental notice of determination on or before July 29, 2021.

On July 29, 2021, Appeals issued a supplemental notice of determination.

By Motion filed by the Court on August 16, 2021, petitioner stated that he had been prevented from participating in the remand hearing by mailing and other delays. Consequently, we imposed a new deadline for Appeals to issue a new supplemental notice of determination regarding the remand. The new deadline was February 2, 2022.

On February 2, 2022, Appeals issued a second supplemental notice of determination. In that notice, Appeals sustained the proposed levy and stated that petitioner is not entitled to currently-not-collectible

[*8] (CNC) status because petitioner failed to submit requested financial information:

> 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. I have reviewed the additional correspondence received from you. I have provided you Internal Revenue Manual (IRM) references, which requires you to provide a completed Form 433-A, Collection Information Statement, for review of your ability/inability to pay. You do not meet the currently not collectable exception criteria as indicated in IRM 5.19.17.2.4.1, due to your total balances due the IRS. During the original hearing, you were provided multiple opportunities to provide a completed Form 433-A and declined the opportunity to assist you in a determination as to the proposed levy by the IRS. Therefore the proposed levy action is sustained.

Another portion of the notice of determination explained the significance of the amount of the balance due:

> During the Supplemental Hearing, I provided you multiple Internal Revenue Manual (IRM) references, reflecting a completed Form 433-A, Collection Information Statement (CIS) is required to proceed with a resolution as to the proposed levy action by the IRS. There is an exception as indicated in IRM 5.19.17.2.4.1, if the reported income is social security only, however, the IRM reference is only in regard to balances due of $10,000.00 or less the IRS. Therefore you do not qualify. Your balance due the IRS requires you to disclose your assets, income and expense to determine the appropriate resolution to the balances due. 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.
>
> Based on this, I have determined due to your refusal to provide a completed Form 433-A, CIS, I am unable to

[*9] assist you with a resolution as to the levy action proposed by the IRS.

The proposed levy action is sustained.

Another portion of the second supplemental notice of determination explained the importance of the requested financial information:

> Per IRM 5.16.1.2.9 – Hardship, in summary states a hardship exists if you are unable to pay reasonable basic living expenses. The basis for a hardship determination is from information about your financial condition provided on Form 433–A, Collection Information Statement for Wage Earners and Self-Employed Individuals. Generally, these cases involve no income or assets, no equity in assets or insufficient income to make any payment without causing hardship. An account should not be reported as CNC if the taxpayer has income or equity in assets and enforced collection of the income or assets would not cause hardship. It states verification of a CIS is not required if the aggregate unpaid balance of assessments is less than $10,000.00 and the information on the CIS appears reasonable. There are certain conditions, a CIS is not required before reporting an account CNC. The aggregate unpaid balance of assessments, including any prior CNCs, must be less than $10,000.00 and states that certain conditions must exist. It further states verification that is required for balances due between $10,000.00 and $100,000.00 and balances above $100,000.00. IRM 5.15.1 – Financial Analysis Handbook as notated in the IRM 5.16.1.2.9 is utilized when you provide a completed CIS.

The second supplemental notice of determination concluded that petitioner refused "to provide the information required" and that therefore it was Appeals' judgment that "the Notice of Intent to Levy balances the efficient collection of taxes with your legitimate concern that the collection action be no more intrusive than necessary."

On December 16, 2022, this case was tried by videoconference. At trial we admitted Exhibit 1000-R, which consisted of (1) the second supplemental declaration of Appeals Officer Lora Davis and (2) sub-exhibits A through QQ.

[*10] OPINION

Before respondent can levy to collect a tax liability, respondent must first notify the taxpayer of the right to a CDP hearing with Appeals. § 6330(a)(1), (b)(1). The hearing, and Appeals' determination following the hearing, are governed by section 6330. Section 6330(c)(1) provides that at the hearing the Appeals officer must obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met. Section 6330(c)(2) provides that the taxpayer may raise at the hearing (1) any relevant issue related to the unpaid tax or the proposed levy, including challenges to the appropriateness of collection actions and including offers of collection alternatives, and (2) challenges to the existence or amount of the underlying tax liability if the person did not have a prior opportunity to dispute such tax liability. Section 6330(c)(3) provides that the determination by Appeals must take into consideration the verification presented under section 6330(c)(1), the issues raised under section 6330(c)(2), and, finally (as provided by section 6330(c)(3)(C)), whether the proposed collection action (in this case a levy) 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. Unless the existence or amount of the underlying tax liability is properly at issue, we review the determination for abuse of discretion. *Goza v. Commissioner*, 114 T.C. 176, 181–82 (2000).

The only remaining issue to resolve is whether Appeals determined that petitioner's income consisted solely of Social Security benefits and if so, whether Appeals abused its discretion in concluding that the proposed levy balanced the need for the efficient collection of tax with petitioner's legitimate concern that any collection action be no more intrusive than necessary.

I. *Appeals did not err in not placing petitioner's account in CNC status.*

On remand, Appeals determined that petitioner did not meet the criteria for CNC status. "CNC status, which suspends IRS collection efforts, 'is a "collection alternative" that the taxpayer may propose and that the Office of Appeals must take into consideration.'" *Riggs v. Commissioner*, T.C. Memo. 2015-98, at *11 (quoting *Wright v. Commissioner*, T.C. Memo. 2012-24, slip op. at 7); *see also Norberg v. Commissioner*, T.C. Memo. 2022-30, at *5. It is available if a taxpayer

[*11] has "no apparent ability to make payments on the outstanding tax liability." *Norberg*, T.C. Memo. 2022-30, at *5.

Because petitioner refused to submit financial information, Appeals determined that petitioner's account did not qualify for CNC status. As Appeals recognized, the amount respondent is attempting to collect from petitioner is more than $10,000. Appeals followed guidance in the *Internal Revenue Manual* that the account of a taxpayer with a balance due of more than $10,000 cannot be placed in CNC status unless the taxpayer's income, expenses, and equity in assets, are verified by financial information from the taxpayer. Reproduced below are relevant portions of the *Internal Revenue Manual* 5.16.1.2.9(1)–(5) (May 22, 2012), which are found in the administrative record at Ex. 1001-R, Ex. S, at 161–62:

> (1) Follow the procedures in IRM 5.15.1, *Financial Analysis Handbook*, to determine the correct resolution of the case based on the taxpayer's assets and equity, income and expenses:
>
> - A hardship exists if a taxpayer is unable to pay reasonable basic living expenses.
> - The basis for a hardship determination is from information about the taxpayer's financial condition provided on Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals* or Form 433-B, *Collection Information Statement for Businesses.*
> - Generally, these cases involve no income or assets, no equity in assets or insufficient income to make any payment without causing hardship.
> - An account should not be reported as CNC if the taxpayer has income or equity in assets, and enforced collection of the income or assets would not cause hardship.
> - Hardship accounts are closed using cc 24 through 32. See Exhibit 5.16.1-2.
>
> **Reminder:** Hardship closing codes can **only** be used for individual or joint IMF assessments, sole

[*12] proprietorships, general partnerships, and LLCs, where an individual owner is identified as the liable taxpayer. See IRM 5.16.1.2.4 for decedent cases.

(2) Verification of a CIS is not required if the aggregate unpaid balance of assessments is less than $10,000 and the information on the CIS appears reasonable.

(3) Under certain conditions, a CIS is not required before reporting an account CNC. The aggregate unpaid balance of assessments, including any prior CNCs, must be less than $10,000.00 and at least one of the following conditions must exist:

- The taxpayer has a terminal illness or excessive medical bills.
- The taxpayer is incarcerated.
- The taxpayer's only source of income is social security, welfare, or unemployment.
- The taxpayer is unemployed with no source of income. Consider a mandatory follow-up or Manually Monitored Installment Agreement (MMIA) for seasonal workers.

Note: Employees are required to secure documentation from the taxpayer prior to declaring the account uncollectible if internal documents such as IRPTR and RTVUE do not confirm the taxpayer's circumstance.

(4) The following verification is required for accounts when the aggregate unpaid balance of assessments is between $10,000.00 and $100,000.00:

- IRPTR or SUPOL
- RTVUE/TRDBV
- Conduct Currency and Banking Retrieval System (CBRS) research when IRPTR reflects that a taxpayer has filed a Foreign Bank Account

[*13] Reporting (FBAR) form to obtain the name of the bank where the account is located, the amount in the account, co-owners, and other useful information. See IRM 5.1.18.15, *Foreign Bank Account Report.*

Note: RTVUE/TRDBV is required only if the last filed return was for one of the immediate two preceding years. If RTVUE reveals new income or asset information secure a copy of the return(s) for the purpose of identifying income or assets.

(5) For accounts where the aggregate unpaid balance of assessments is above $100,000.00 the following additional verification is required:

- **Full credit report** on IMF and sole proprietor taxpayers and LLCs (where an individual owner is identified as the liable taxpayer)
- Motor vehicle records
- Real and personal property courthouse records, see IRM 5.1.18.4, *Real Property Records*
- On-line locator services, such as Accurint, follow security guidelines when using public internet search engines.
- CC AMDIS. If there is an open Examination activity, contact the revenue agent to determine any additional sources of collection or the need to limit the scope of the examination based on collectability.
- Audit File or Special Agents Report if the assessment originated in Examination or Criminal Investigation (CI). The file can be secured by requesting the DLN of the TC 29X/30X.

Note: If unable to obtain any information from the special agent, consider consulting with Advisory. If

[*14] there is a TC 910 on the module, the taxpayer may have filed a financial statement with the probation office.

Note: Credit reports are optional for accounts with an aggregate balance below $100,000.00.

We hold that Appeals did not abuse its discretion in refusing to place petitioner's account in CNC status. *See Chadwick v. Commissioner*, 154 T.C. 84, 95 (2020) (stating that Appeals does not abuse discretion in denying CNC status to taxpayer who does not submit the necessary financial information).

In our Order of May 20, 2020, we inferred from the then-existing administrative record that Appeals could rely entirely on past-filed returns, without requiring financial information from petitioner, in determining whether petitioner could pay his tax.[4] 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*, 85 T.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. The administrative record related to the remand proceedings shows that Appeals denied CNC status for petitioner's account because he refused to provide financial information. Our conclusion that Appeals on remand did not abuse its discretion in denying CNC status for petitioner's account is not inconsistent with our Order of May 20, 2020. In that Order we determined that an issue remained for trial. We have now had that trial. We resolve the issue in favor of respondent.

II. *Appeals did not err in evaluating petitioner's sole unresolved challenge to the levy by determining whether his account was eligible for CNC status.*

Petitioner contends that Appeals erred on remand in considering whether his account was eligible for CNC status. Petitioner explains that he did not request such status during the remand hearing and

[4] We had observed that the two case-activity entries of April 14, 2014, "suggested" that the Appeals officer had "reviewed information from petitioner's income tax returns and, on the basis of that information, concluded that petitioner could not pay the amounts the levy was intended to collect."

[*15] therefore he should not have been subjected to the requirement that he submit financial information.

Although petitioner did not request CNC status on remand, Appeals agreed to waive the requirement that petitioner request CNC status. As the second supplemental notice of determination states: "It has been agreed that you are not required to request a collection alternative or CNC during the CDP Appeals process." The question therefore becomes whether Appeals erred in waiving this requirement and in considering whether petitioner's account qualified for CNC status despite this requirement.

CNC status is appropriate when the taxpayer cannot pay. *Norberg*, T.C. Memo. 2022-30, at *5. Petitioner's argument related to Social Security benefits was in essence that he cannot pay the amounts respondent intends to collect. As petitioner argued in his Motion for Partial 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." In his November 15, 2017 Response to respondent's October 12, 2017, Motion for Summary Judgment, petitioner contended that Appeals had failed to determine whether he was "financially able to pay." 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), which was the same argument the Court considered in reconsidering its grant of respondent's Motion for Summary Judgment. *Plotkin*, T.C. Memo. 2019-27, at *52–53. It was appropriate for Appeals on remand to evaluate petitioner's argument against the intended levy by determining whether petitioner's account qualified for CNC status.

III. *Appeals did not err in considering petitioner's refusal to provide financial information in applying the balancing test.*

The corollary to petitioner's argument that financial information should be required only for taxpayers who request CNC status is that no such information should be required for Appeals to apply the balancing test under section 6330(c)(3)(C). This argument is unavailing. Looking at the second supplemental notice of determination through the lens of section 6330(c)(3)(C), we discern no abuse of discretion by Appeals. The second supplemental notice of determination concluded that petitioner refused "to provide the information required" and that therefore it was Appeals' judgment that "the Notice of Intent to Levy

[*16] balances the efficient collection of taxes with your legitimate concern that the collection action be no more intrusive than necessary." The *Internal Revenue Manual*'s guidance for determining whether a levy meets the section 6330(c)(3)(C) balancing test requires Appeals to consider a taxpayer's "financial circumstances." *Gonzalez v. Commissioner*, T.C. Memo. 2010-8, slip op. at 8 ("As required under section 6330(c)(3)(C), an Appeals officer should consider, among other things, a taxpayer's actions, compliance history, and financial circumstances when balancing the Government's needs with those of the taxpayer. Internal Revenue Manual pt. 8.7.2.3.13(6) (Jan. 1, 2006).") In the remand proceeding, Appeals asked petitioner for financial information in order to understand his financial circumstances. Petitioner refused to provide any. Consequently, Appeals did not err in concluding the levy met the balancing test under section 6330(c)(3)(C). *See Cosio v. Commissioner*, T.C. Memo. 2022-18, at *8 (stating that where taxpayer did not respond to requests for financial information or a completed offer-in-compromise form, Appeals did not abuse its discretion in determining that the levy balanced the needs of collection with the concerns of the taxpayer); *Bunton v. Commissioner*, T.C. Memo. 2021-141, at *22 (stating that Appeals did not abuse its discretion in concluding that the levy balanced the needs of collection with the concerns of the taxpayers given that taxpayers never submitted financial information or outstanding tax returns), *aff'd*, No. 22-70139, 2023 WL 4449183 (9th Cir. July 11, 2023); *Ramdas v. Commissioner*, T.C. Memo. 2013-104, at *41 (stating that a taxpayer who alleges that a levy would be a hardship must follow up with further information to prove the harmfulness of the levy before Appeals, otherwise the taxpayer does not prove hardship that would render the levy "more intrusive than necessary"); *Vuckovich v. Commissioner*, T.C. Memo. 2009-7, slip op. at 8–9 (same); *see also Assured Source, Inc. v. Commissioner*, T.C. Memo. 2010-243, slip op. at 7–9 (stating that Appeals did not abuse its discretion by failing to engage in the balancing analysis under section 6330(c)(3)(C) where taxpayer submitted no financial information and did not submit outstanding tax returns).

IV. *Appeals did not err regarding matters outside the scope of the remand.*

On brief, petitioner also makes two arguments regarding the amounts rendered uncollectible in 2004 by the expiration of the ten-year period for collecting assessed tax liabilities. First, petitioner contends that Appeals erred in its original notice of determination in verifying that all requirements of any applicable law or administrative procedure

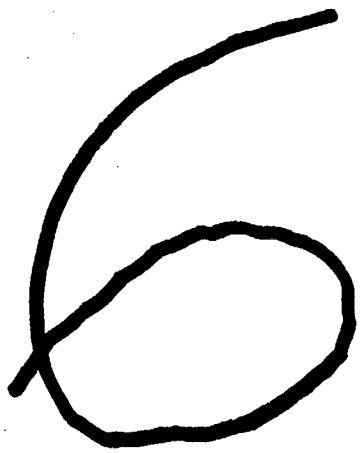
[*17] have been met. Second, petitioner contends that respondent has abated interest in the wrong amount. The CDP hearing conducted on remand was not a new hearing, but rather a hearing to provide "the parties with the opportunity to complete the initial section 6330 hearing while preserving the taxpayer's right to receive judicial review of the *ultimate* administrative determination." *Kelby v. Commissioner*, 130 T.C. 79, 86 (2008) (quoting *Drake v. Commissioner*, T.C. Memo. 2006-151, *aff'd*, 511 F.3d 65 (1st Cir. 2007)). We remanded the case to Appeals to consider only one issue, the balancing test. These other issues are outside the scope of the remand.

V. *Conclusion*

In its second supplemental notice of determination, dated February 2, 2022, Appeals did not abuse its discretion in determining that the proposed levy balances the efficient collection of taxes with petitioner's concern that the collection action be no more intrusive than necessary. All other issues in this case were resolved by our April 2019 Memorandum Opinion, as modified by our May 20, 2020, Order. Consequently, the June 9, 2014, notice of determination by Appeals, as supplemented by the July 29, 2021, supplemental notice of determination, and as supplemented by the February 2, 2022, second supplemental notice of determination, should be sustained except as to the collection of the following liabilities by the proposed levy: (1) the tax liabilities (and related interest and additions to tax) for 1991, 1992, and 1993 and (2) the liability for the deficiency for 1995 of $6,000 (the difference between $66,031 and $60,031).

To reflect the foregoing,

An appropriate order and decision will be entered.



Fifth Amendment

The Fifth Amendment creates a number of rights relevant to both criminal and civil legal proceedings. In criminal cases, the Fifth Amendment guarantees the right to a grand jury, forbids "double jeopardy," and protects against self-incrimination. It also requires that "due process of law" be part of any proceeding that denies a citizen "life, liberty or property" and requires the government to compensate citizens when it takes private property for public use.

Learn more...

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Wex Resources

- Fifth Amendment
- Criminal Law / Criminal Procedure
- Due Process
- Substantive Due Process

7

26 U.S. Code § 6330 - Notice and opportunity for hearing before levy

U.S. Code Notes

(a) Requirement of notice before levy

(1) In general

No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

(2) TIME AND METHOD FOR NOTICE

The notice required under paragraph (1) shall be—

(A) given in person;

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

(C) sent by certified or registered mail, return receipt requested, to such person's last known address;

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

(3) INFORMATION INCLUDED WITH NOTICE

The notice required under paragraph (1) shall include in simple and nontechnical terms—

(A) the amount of unpaid tax;

(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

(i) the provisions of this title relating to levy and sale of property;

(ii) the procedures applicable to the levy and sale of property under this title;

(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and

(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

(b) RIGHT TO FAIR HEARING

(1) IN GENERAL

If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Independent Office of Appeals.

(2) One hearing per period

A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) Impartial officer

The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

(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 relating to the unpaid tax or the proposed levy, including—

(i) appropriate spousal defenses;

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

(iii) 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.

(B) Underlying liability

The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did

not otherwise have an opportunity to dispute such tax liability.

(3) Basis for the determination

The determination by an appeals officer under this subsection 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.

(4) Certain issues precluded

An issue may not be raised at the hearing if—

(A)

(i) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and

(ii) the person seeking to raise the issue participated meaningfully in such hearing or proceeding;

(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A); or

(C) a final determination has been made with respect to such issue in a proceeding brought under subchapter C of chapter 63.

This paragraph shall not apply to any issue with respect to which subsection (d)(3)(B) applies.

(d) Proceeding after hearing

(1) Petition for review by Tax Court

The person may, within 30 days of a determination under this section, petition the Tax Court for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter).

(2) Suspension of running of period for filing petition in title 11 cases

In the case of a person who is prohibited by reason of a case under title 11, United States Code, from filing a petition under paragraph (1) with respect to a determination under this section, the running of the period prescribed by such subsection for filing such a petition with respect to such determination shall be suspended for the period during which the person is so prohibited from filing such a petition, and for 30 days thereafter.

(3) Jurisdiction retained at IRS Independent Office of Appeals

The Internal Revenue Service Independent Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

(A) collection actions taken or proposed with respect to such determination; and

(B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

(e) Suspension of collections and statute of limitations

(1) In general

Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.

(2) Levy upon appeal

Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

(f) Exceptions

If—

(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy,

(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund,

(3) the Secretary has served a disqualified employment tax levy, or

(4) the Secretary has served a Federal contractor levy,

this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

(g) Frivolous requests for hearing, etc.

Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

(h) Definitions related to exceptions

For purposes of subsection (f)—

(1) Disqualified employment tax levy

A disqualified employment tax levy is any levy in connection with the collection of employment taxes for any taxable period if the person subject to the levy (or any predecessor thereof) requested a hearing under this section with respect to unpaid employment taxes arising in the most recent 2-year period before the beginning of the taxable period with respect to which the levy is served. For purposes of the preceding sentence, the term "employment taxes" means any taxes under chapter 21, 22, 23, or 24.

(2) Federal contractor levy

A Federal contractor levy is any levy if the person whose property is subject to the levy (or any predecessor thereof) is a Federal contractor.

(Added Pub. L. 105–206, title III, §3401(b), July 22, 1998, 112 Stat. 747; amended Pub. L. 106–554, §1(a)(7) [title III, §313(b)(2)(A), (d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–642, 2763A–643; Pub. L. 109–280, title VIII, §855(a), Aug. 17, 2006, 120 Stat. 1019; Pub. L. 109–432, div. A, title IV, §407(b), Dec. 20, 2006, 120 Stat. 2961; Pub. L. 110–28, title VIII, §8243(a), (b), May 25, 2007, 121 Stat. 200; Pub. L. 111–240, title II, §2104(a)–(c), Sept. 27, 2010, 124 Stat. 2565; Pub. L. 114–74, title XI, §1101(d), Nov. 2, 2015, 129 Stat. 637; Pub. L. 114–113, div. Q, title IV, §424(b)(1), Dec. 18, 2015, 129 Stat. 3124; Pub. L. 115–141, div. U, title IV, §401(a)(281), (282), Mar. 23, 2018, 132 Stat. 1197; Pub. L. 116–25, title I, §1001(b)(1)(C), (3), July 1, 2019, 133 Stat. 985.)

26 U.S. Code § 7443 - Membership

U.S. Code Notes

(a) NUMBER
The Tax Court shall be composed of 19 members.

(b) APPOINTMENT
Judges of the Tax Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office.

(c) SALARY

(1) Each judge shall receive salary at the same rate and in the same installments as judges of the district courts of the United States.

(2) For rate of salary and frequency of installment see section 135, title 28, United States Code, and section 5505, title 5, United States Code.

(d) Expenses for travel and subsistence

Judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Court of International Trade.

(e) Term of office

The term of office of any judge of the Tax Court shall expire 15 years after he takes office.

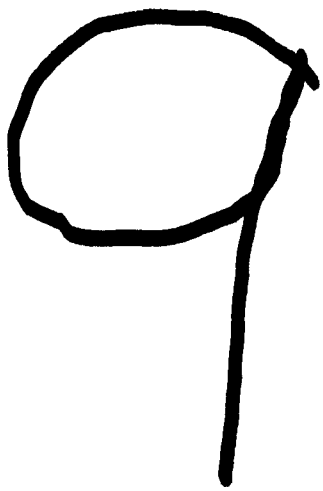
(f) Removal from office

Judges of the Tax Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

(g) Disbarment of removed judges

A judge of the Tax Court removed from office in accordance with subsection (f) shall not be permitted at any time to practice before the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 879; Mar. 2, 1955, ch. 9, §1(h), 69 Stat. 10; Pub. L. 88–426, title IV, §403(i), Aug. 14, 1964, 78 Stat. 434; Pub. L. 91–172, title IX, §§952, 953, Dec. 30, 1969, 83 Stat. 730; Pub. L. 96–417, title VI, §601(10), Oct. 10, 1980, 94 Stat. 1744; Pub. L. 96–439, §1(a), (b), Oct. 13, 1980, 94 Stat. 1878.)



26 U.S. Code § 7447 - Retirement

U.S. Code Notes

(a) DEFINITIONS

For purposes of this section—

(1) The term "Tax Court" means the United States Tax Court.

(2) The term "judge" means the chief judge or a judge of the Tax Court; but such term does not include any individual performing judicial duties pursuant to subsection (c).

(3) In any determination of length of service as judge there shall be included all periods (whether or not consecutive) during which an individual served as

judge, as judge of the Tax Court of the United States, or as a member of the Board of Tax Appeals.

(b) RETIREMENT

(1) Any judge shall retire upon attaining the age of 70.

(2) Any judge who meets the age and service requirements set forth in the following table may retire:

The judge has attained age:	And the years of service as a judge are at least:
65	15
66	14
67	13
68	12
69	11
70	10.

(3) Any judge who is not reappointed following the expiration of the term of his office may retire upon the completion of such term, if (A) he has served as a judge of the Tax Court for 15 years or more and (B) not earlier than 9 months preceding the date of the expiration of the term of his office and not later than 6 months preceding such date, he advised the President in writing that he was willing to accept reappointment to the Tax Court.

(4) Any judge who becomes permanently disabled from performing his duties shall retire.

Section 8335(a) of title 5 of the United States Code (relating to automatic separation from the service) shall not apply in respect of judges. Any judge who retires shall be designated "senior judge".

(c) RECALLING OF RETIRED JUDGES

At or after his retirement, any individual who has elected to receive retired pay under subsection (d) may be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of him for any period or periods specified by the chief judge; except that in the case of any such individual—

(1) the aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and

(2) he shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a judge of the Tax Court; but any such individual shall not be counted as a judge of the Tax Court for purposes of section 7443(a). Any individual who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

(d) RETIRED PAY

Any individual who—

(1) retires under paragraph (1), (2), or (3) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period as the number of years he has served as judge bears to 10; except that the rate of such retired pay shall not be more than the rate of such salary for such period; or

(2) retires under paragraph (4) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate—

(A) equal to the rate of the salary payable to a judge during such period if before he retired he had served as a judge not less than 10 years; or

(B) one-half of the rate of the salary payable to a judge during such period if before he retired he had served as a judge less than 10 years.

Such retired pay shall begin to accrue on the day following the day on which his salary as judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as a judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more. In

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