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UNITED STATES TAX COURT

FAYTHE [REDACTED],)
)
Petitioner,)
)
v.) Docket No. [REDACTED]-11 L
)
COMMISSIONER OF INTERNAL REVENUE,) Filed Electronically
)
Respondent.)

MOTION TO REMAND

RESPONDENT MOVES, that the Court remand this Collection Due Process case to the Respondent's [REDACTED] Appeals Office for further consideration.

IN SUPPORT THEREOF, the respondent respectfully states:

1. This is a Collection Due Process ("CDP") case pertaining to the filing of a Notice of Federal Tax Lien with respect to the 2007 civil tax penalty due from Petitioner.
2. On [REDACTED], 2010, Respondent sent Petitioner a Notice of Federal Tax Lien Filing and Your Right to A Hearing Under IRC 6320 (Lien Notice) for the year 2007.
3. On [REDACTED], 2010, Respondent received Petitioner's Request for a Collection Due Process Hearing Form 12153 with respect to the Lien Notice, in which Petitioner claimed that she wanted to challenge the 2007 tax liability. Petitioner also stated that she wanted to combine her lien CDP hearing with her previously requested levy CDP hearing.

4. On █████, 2011, the Appeals Officer issued a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 (Lien Determination Letter) upholding the notice of lien collection activity. In her Lien Determination Letter, the Appeals Officer incorrectly determined that Petitioner could not raise the issue of her underlying 2007 tax liability because she had a prior opportunity to do so during a levy CDP hearing.

5. A person may raise challenges to the existence or amount of the underlying tax liability during a CDP hearing, if the person did not otherwise have an opportunity to dispute such tax liability. I.R.C. § 6330(c)(2)(B).

6. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals offered either before or after assessment of the liability. Treas. Reg. §§ 301.6320-1(e)(3) Q&AE2, 301.6330-1(e)(3) Q&A-E2; see also, e.g., Bailey v. Commissioner, T.C. Memo. 2005-241; Pelliccio v. United States, 253 F. Supp. 2d 258, 261-62 (D. Conn. 2003). However, a prior opportunity does not include an appeals conference that was pending when the CDP notice was issued. Perkins v. Commissioner, 129 T.C. 58 (2007).

Levy Hearing

7. Respondent sent Petitioner a Final Notice of Intent to Levy and Notice of Your Right to A Hearing, Letter 1058 (Levy Notice), for the year 2007 on █████, 2010.

8. Respondent received Petitioner's Request for a Collection Due Process Hearing Form 12153 with respect to the Levy Notice on █████, 2010.

9. A levy CDP hearing for the year 2007 was scheduled for █████, 2010. Consequently, at the time the Lien Notice was issued on █████, 2010, Petitioner's levy CDP hearing was still pending.

* 10. Thus, the Appeals Officer incorrectly failed to consider the issue of Petitioner's underlying 2007 tax liability prior to issuing the Lien Determination Letter. *

11. Respondent now seeks an order from this Court allowing the case to be formally remanded to the █████ Appeals Office for consideration of the issue of Petitioner's underlying 2007 tax liability.

12. The Tax Court may remand a case to the Appeals Office where a new hearing will be productive. Lunsford v. Commissioner, 117 T.C. 183, 189 (2001).

13. On [REDACTED], 2012, Respondent sent Petitioner a letter inquiring as to whether or not she objects to the granting of this motion. To date, Petitioner has not responded to Respondent's letter.

WHEREFORE, Respondent requests that this motion be granted.

[REDACTED]
Chief Counsel
Internal Revenue Service

Date: [REDACTED] 2012

By: [REDACTED]
Senior Attorney
(Small Business/Self-Employed)

[REDACTED]

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