

UNITED STATES TAX COURT
RECEIVED
UNITED STATES TAX COURT
INTAKE # 5

FILED
U.S. TAX COURT
ROBERT R. DITROLIO, CLERK

(FIRST) (MIDDLE) (LAST)
2014 JUN 13 PM 1:05

Allgreens LLC
(PLEASE TYPE OR PRINT) Petitioner(s)

2014 JUN 13 PM 1:09

BY: TAW
DEPUTY CLERK

Docket No.

v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

13860-14

PETITION

1. Please check the appropriate box(es) to show which IRS NOTICE(s) you dispute:

- Notice of Deficiency
- Notice of Determination Concerning Your Request for Relief From Joint and Several Liability. (If you requested relief from joint and several liability but the IRS has not made a determination, please see the Information for Persons Representing Themselves Before the U.S. Tax Court booklet or the Tax Court's Web site.)
- Notice of Determination Concerning Collection Action
- Notice of Determination Concerning Worker Classification

2. Provide the date(s) the IRS issued the NOTICE(s) checked above and the city and State of the IRS office(s) issuing the NOTICE(S): May 21, 2014, Minnesota office

3. Provide the year(s) of period(s) for which the NOTICE(S) was/were issued: 12/2012, 3/2013, 6/2013

4. SELECT ONE OF THE FOLLOWING:

- If you want your case conducted under small tax case procedures, check here: (CHECK ONE BOX)
- If you want your case conducted under regular tax case procedures, check here: (CHECK ONE BOX)

NOTE: A decision in a "small tax case" cannot be appealed to a Court of Appeals by the taxpayer or the IRS. If you do not check either box, the Court will file your case as a regular tax case.

5. Explain why you disagree with the IRS determination in this case (please list each point separately):

Please see attachment.

6. State the facts upon which you rely (please list each point separately):

Please see attachment.

You may use additional pages to explain why you disagree with the IRS determination or to state additional facts. **Please do not submit tax forms, receipts, or other types of evidence with this petition.**

ENCLOSURES: Please check the appropriate boxes to show that you have enclosed the following items with this petition:

- A copy of the Determination or Notice the IRS issued to you
- Statement of Taxpayer Identification Number (Form 4) (See PRIVACY NOTICE below)
- The Request for Place of Trial (Form 5) The filing fee

PRIVACY NOTICE: Form 4 (Statement of Taxpayer Identification Number) will not be part of the Court's public files. All other documents filed with the Court, including this Petition and any IRS Notice that you enclose with this Petition, will become part of the Court's public files. To protect your privacy, you are strongly encouraged to omit or remove from this Petition, from any enclosed IRS Notice, and from any other document (other than Form 4) your taxpayer identification number (e.g., your Social Security number) and certain other confidential information as specified in the Tax Court's "Notice Regarding Privacy and Public Access to Case Files", available at www.ustaxcourt.gov.


SIGNATURE OF PETITIONER	DATE	(AREA CODE) TELEPHONE NO.
MAILING ADDRESS	CITY, STATE, ZIP CODE	

State of legal residence (if different from the mailing address): _____

SIGNATURE OF ADDITIONAL PETITIONER (e.g., SPOUSE)	DATE	(AREA CODE) TELEPHONE NO.
MAILING ADDRESS	CITY, STATE, ZIP CODE	

State of legal residence (if different from the mailing address): _____

ADMITTED

	Rachel K. Gillette	GR0802
SIGNATURE OF COUNSEL, IF RETAINED BY PETITIONER(S)	NAME OF COUNSEL	TAX COURT BAR NO.

103 E. Simpson St., Ste 200, Lafayette, CO 80026	6/6/2014	303 665-0860
MAILING ADDRESS, CITY, STATE, ZIP CODE	DATE	(AREA CODE) TELEPHONE NO.

5. We disagree with the IRS's Determination that the taxpayer does not meet reasonable cause for an abatement of penalties for the tax periods 941 12/2012, 941 03/2013, and 941 06/2013 for the following reasons:

5a. The taxpayer is a compliant business making timely deposits and filing timely returns, but due to circumstances beyond its control, it is unable to make deposits via the EFTPS System. Taxpayer has been continuously penalized, levied, and faces future enforced collections as a result of penalties assessed to its taxpayer account.

5b. The taxpayer's request for an abatement of penalties for reasonable cause was denied by the IRS on March 21, 2013. The IRS determined that the abatement of these penalties was appropriate as "alternatives" exist. Appeals noted, IRM 21.2.1.47(4) states "if the participant does not want to use EFTPS, they can arrange for their tax professional, financial institution, payroll service, or other trusted third party to make deposits on their behalf." We believe the alternatives the IRS has proposed are not viable nor reasonable alternatives for the taxpayer.

5c. Taxpayer's circumstance meets the I.R.M.'s definition of reasonable cause under I.R.M. 20.1.1.3.2(3)(A), Revenue Ruling 94-96, and for the IRS to deny the abatement request is arbitrary and capricious.

6. The facts upon which Taxpayer relies in its disagreement with the IRS's Notice of Determination:

6a. Taxpayer is a licensed marijuana business, legally operating under the Colorado Constitution's Amendments 20 and 64, the Colorado Retail Marijuana Code, C.R.S. 12-43.4-101 *et. al*, and the Colorado Medical Marijuana Code 12-43.3.101 *et. al*. The taxpayer is a timely and

compliant taxpayer. However, due to federal banking regulations, the taxpayer, and all licensed marijuana businesses in Colorado are unable to openly hold and access bank accounts. Thus, many marijuana business taxpayers are forced to make 941 and 940 tax deposits and income tax payments in cash or through money orders directly to the IRS, rather than through the Electronic Federal Tax Payment System (EFTPS), which taxpayer would otherwise have utilized. The EFTPS system requires a bank account for its use.

6b. Under IRM 20.1.1.3.2, “Reasonable cause is based on all the facts and circumstances in each situation and allows the IRS to provide relief from a penalty that would otherwise be assessed. Reasonable cause relief is generally granted when the taxpayer exercised ordinary business care and prudence in determining their tax obligations but nevertheless failed to comply with those obligations.”

6c. For those penalties where reasonable cause can be considered, any reason which establishes that the taxpayer exercised ordinary business care and prudence, but nevertheless was unable to comply with a prescribed duty within the prescribed time, will be considered. IRM 20.1.1.3.2 (3)(A)

6d. Taxpayers have reasonable cause when their conduct justifies the non-assertion or abatement of a penalty. Each case must be judged individually based on the facts and circumstances at hand. IRM 20.1.1.3.2 (5)

6e. The facts and circumstances of this case show that the taxpayer has exercised ordinary business care and prudence, but was nevertheless unable to comply with the Electronic Federal Tax Payment requirement due to circumstances completely outside of taxpayer’s control.

Taxpayer showed no willful neglect as the taxpayer is compliant and merely contests a system which imposes penalties on its good faith efforts. It was not that the taxpayer “did not want” to make use of the EFTP System. Rather, the taxpayer is unable to secure a bank account due to the nature of its business, which is explicitly legal under Colorado State law. With no bank account and no access to banking services, the taxpayer is simply *incapable* of making EFTPS payments or to utilize the EFTP System.

6f. The IRS’s noted cause for relief from penalties is that the reasons behind the taxpayer’s failure to comply be “reasonable.” As such, the IRS must consider what is reasonable under all of the facts and circumstances of the taxpayer’s situation.

6g. The IRS has posited that the taxpayer is not entitled to relief because “alternatives exist.” Notably, the IRS acknowledges that “federal and state law banks will not issue an account to a dispensary.” However, the IRS’s proposed “alternatives” to the assessment of the penalty are (a) not legal alternatives for licensed marijuana businesses; or (b) not actual alternatives. These supposed “alternatives” include:

1. “Taxpayer may use a currency exchange/same-day loan establishment, to convert cash (often times for a fee) into a money order to deposit and then use a financial institution to complete a same-day wire transaction (often times for a fee).”

a. This is not an alternative for a taxpayer in the marijuana industry. Although the taxpayer has a legal and licensed operation in Colorado, the taxpayer’s legal activities within the state could still be considered money laundering under 18

U.S.C. §1956. An alternative should not force a taxpayer to engage in a potentially unlawful activity under a federal statute.

2. "Taxpayer may utilize/authorize a third party such as a tax professional, accountant, payroll service firm, etc., to make the deposit on their behalf. Using the third party service, the deposit is made through the batch provider software using the third parties' bank account."

a. This is not an alternative for a taxpayer in the marijuana industry. Although the taxpayer has a legal and licensed operation in Colorado, the taxpayer's legal activities within the state could still be considered money laundering under 18 U.S.C. §1956. An alternative should not force a taxpayer to engage in a potentially unlawful activity under a federal statute.

3. "Taxpayer may remit full payment when they file their tax return. However, taxpayers using this method will be assessed a FTD penalty since EFTPS was not used as required. It is not appropriate to abate the FTD penalty simply because they could not get a bank account when alternatives/options exist."

a. This is not an actual "alternative" to being assessed a penalty for failure to pay via EFTPS. Rather, the IRS's suggestion of paying the tax with the return when a taxpayer is a monthly or bi-weekly tax depositor would actually cause the taxpayer to accrue not only the EFTPS penalty, but also a late payment penalty.

This "alternative" essentially advises marijuana business taxpayers to be even

more non-compliant by asserting that taxpayers could avoid the EFTPS penalty liability by incurring the EFTPS penalty as well as additional penalties.

6g. The IRS's decision in this case is arbitrary and capricious. The Agency has not engaged in reasoned decision-making as it has not considered the effects its alternatives will have on a taxpayer within the marijuana industry. To suggest that a licensed, compliant marijuana business in Colorado should engage in illegal activity or “alternatively” accrue a penalty (or two) is neither reasoned, nor a cogent explanation as to why this taxpayer should not be entitled to an abatement of these penalties for reasonable cause. Additionally, the Agency has neither articulated a satisfactory explanation for its action nor has it cogently explained why it has exercised its discretion in a given manner. Here, the IRS has stated simply that blanket alternatives exist and has turned a blind eye to the Taxpayer's particular facts and circumstances. Even though the IRS has acknowledged that there are conditions outside of Taxpayer's control which make EFTPS payments all but impossible, the Agency refuses to consider abatement as a means to avoid unfair tax treatment to legitimate, licensed, and tax compliant businesses within Colorado.



Department of the Treasury
Internal Revenue Service
Appeals Office
St Paul Appeals
380 Jackson St, Ste 600, St Paul, MN 55101

ALLGREENS LLC
752 KALAMATH ST
DENVER CO 80204-4403

Date: MAY 21 2014

Person to contact:
Name: Jim Hallen
Employee ID number: 0207839
Tel: 651-726-7445
Fax: 855-232-3990

Refer reply to:
FE: STP:JEH

Taxpayer ID number:
XX-XXX3438

Tax period(s) ended:
12/2012 3/2013 6/2013

In re:
Collection Due Process Hearing
(Tax Court)

CERTIFIED MAIL

NOTICE OF DETERMINATION

Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code

Dear Taxpayer

We reviewed the completed or proposed collection actions for the tax period(s) shown above. This letter is your Notice of Determination, as required by law. We attached a summary of our determination below. The attached summary shows, in detail, the matters we considered at your Appeals hearing and our conclusions.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter. To obtain a petition form and the rules for filing a petition, write to:

Clerk, United States Tax Court
400 Second Street NW
Washington, DC 20217

You can also visit the Tax Court website at www.ustaxcourt.gov.

The United States Tax Court also has a simplified procedure for an appeal of a collection action if the total unpaid tax (including interest and penalties) for all periods doesn't exceed \$50,000. You can obtain information about this simplified procedure by writing to the Tax Court or visiting their website as shown above.

The law limits the time for filing your petition to the 30-day period mentioned above. The courts cannot consider your case if you file late. If you file an appeal in an incorrect court (e.g., United States District Court) you won't be able to refile in the United States Tax Court if the period for filing a petition expired.

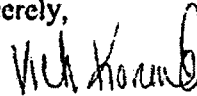
If you don't petition the court within the period provided by law, we'll return your case to the originating IRS office for action consistent with the determination summarized below and described on the attached pages. If you have questions, please contact the person at the telephone number shown above.

Summary of Determination

The Notice of Federal Tax Lien (NFTL) was filed properly.
The proposed levy action is sustained.

Thank you for your cooperation.

Sincerely,



Vicki F. Burbach-Koranda
Appeals Team Manager

[cc:]Rachel K Gillette POA

ATTACHMENT TO NOTICE OF DETERMINATION

ALLGREENS LLC 20-8193438

This is in response to your request for a Collection Due Process ("CDP") hearing under IRC §6320 and IRC§6330 for the following tax and periods.

Type of Tax	Tax Periods	Date of CDP Notice		Date CDP Request Received		Timeliness	
		Lien	Levy	Lien	Levy	Lien	Levy
941	12/31/2012	1/28/2014	1/14/2014	2/13/2014	2/13/2014	Yes	Yes
941	3/31/2013	1/28/2014	1/14/2014	2/13/2014	2/13/2014	Yes	Yes
941	6/30/2013	1/28/2014	1/14/2014	2/13/2014	2/13/2014	Yes	Yes

SUMMARY AND RECOMMENDATION

The Notice of Federal Tax Lien (NFTL) was filed properly.
The proposed levy action is sustained.

BRIEF BACKGROUND

You are appealing the filed Notice of Federal Tax Lien under provisions of IRC §6320 for the periods shown above. Additionally, you are appealing proposed collection action under provisions of IRC §6330 for the periods shown above.

The liability arose from voluntarily filed tax returns which lacked timely federal tax deposits. You were assessed failure to deposit penalties under IRC §6656 – Taxes paid directly to IRS.

On March 21, 2014, I sent you a letter scheduling your CDP hearing for May 7, 2014 at 10a.m. CST. I asked that you call me at the scheduled time. Additionally, I offered you a face to face conference in the Appeals Office closest to your business address. The hearing letter requested that you submit a letter explaining why you disagree with the underlying liability on the periods listed above. You were also required to provide Completed Collection Information Statement Form 433-B for businesses, Profit and Loss Statement for period 1/1/2013 – 12/31/2013, Proof of timely deposit of all federal employment taxes for the current quarter and Copy of Form 1065 for period ending 12/31/2013 or proof of extension. These items were to be provided within 14 days of the March 21, 2014 letter or in the case of the tax return 21 days from the date of the letter. None of these items were provided prior to or after the CDP hearing. On May 7, 2014 your Collection Due Process hearing was held by telephone with Power of Attorney (POA) Rachel Gillette.

DISCUSSION AND ANALYSIS

Verification of Legal and Procedural Requirements

The requirements of applicable law or administrative procedures have been met and the actions taken were appropriate under the circumstances.

- I verified through transcript analysis that assessment was made on the applicable CDP notice periods per IRC § 6201 and the notice and demand for payment letter was mailed to your last known address, within 60 days of the assessment, as required by IRC § 6303.
- IRC § 6321 provides a statutory lien when a taxpayer neglects or refuses to pay a tax liability after notice and demand for payment. Transcripts of your account show that IRS issued notice and demand for payment for each of the tax periods involved and those periods remained unpaid.
- Per transcript analysis, a CP504B notice, warning of a possible filing of a NFTL, was issued for the tax periods subject to the hearing at least 31 days prior to the lien filing.
- Per transcript analysis, there was a balance due when the NFTL filing was requested. Additionally, there was a balance due when the CDP levy notice was issued per IRC §§ 6330 and 6331(a). There is still a balance due.
- IRC § 6330(a) imposes the requirement that a taxpayer be given an opportunity for hearing before the Internal Revenue Service can levy on the taxpayer's property.
- Letter 3172, Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320, Notice of Federal Tax Lien Filing and Your Right to a Hearing Under 6320, was sent by certified mail to your last known address.
- Per review of computer transcripts, the CDP notice (Letter 1058) was sent by Certified Mail, Return Receipt Requested, to your last known address, which was also the address indicated on your CDP hearing request.
- There is no offer-in-compromise or installment agreement pending or currently in effect.
- There is no pending bankruptcy case, nor did you have a pending bankruptcy case at the time the CDP notice was sent (11 USC §362(a)(6)).

- The Service received Forms 12153, Request for a Collection Due Process Hearing, on 2/13/2014. Your hearing request is timely.
- The collection period allowed by statute to collect the tax has been suspended by the appropriate computer codes for the tax periods at issue. Transaction Code 520 has posted for each of the tax periods above as the date the IRS received the CDP hearing request.
- This Appeals employee has had no prior involvement with you concerning the applicable tax periods before this CDP case.

Relevant Issues Raised by the Taxpayer

- On Form 12153, Request for Collection Due Process Hearing you checked the Offer in Compromise Box. You also checked the Lien Withdrawal Box and included a statement that we have been making 941 with a 941-V form and I am still being penalized.
- Your POA raised the issue of penalty abatement based on reasonable cause for the periods listed above.
- You raised no other issues.

Underlying Liability

Taxpayers may challenge the existence or amount of the underlying tax liability if they did not receive a notice of deficiency or did not have an earlier opportunity to dispute the tax liability. The provisions of IRC 6330(c)(2)(B) are a statutory bar to contesting liability. IRC 6330(c)(2)(B) provides that a taxpayer may "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."

You did not raise underlying tax liability as an issue in the CDP process.

Lien Withdrawal

I considered whether any of the criteria for allowing withdrawal of the lien existed in your case.

IRC § 6323(j) allows the withdrawal of a filed notice of lien without full payment and without prejudice under the following conditions:

Taxpayer name: Algreens LLC
Collection Due Process – Lien & Levy
AP:FE:STP:JEH

1. The filing of the notice of lien was premature or otherwise not in accordance with administrative procedures of the Internal Revenue Service;
2. The taxpayer had entered into an installment agreement under IRC § 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise;
3. Withdrawal of the lien will facilitate collection of the tax liability; or
4. With the consent of the taxpayer or the National Taxpayer Advocate (NTA), the withdrawal of such notice would be in the best interest of the taxpayer (determined by the NTA or the taxpayer) and the United States.

You have not presented any information that would support withdrawal of the filed lien under any of these four categories. In addition, there is nothing in the Collection administrative file that indicates withdrawal of the filed lien should be considered.

Penalty Abatement

Taxpayer's may raise reasonable cause penalty abatement in their CDP hearing if they did not have a prior opportunity to dispute the liability.

To raise penalty appeal in CDP, the taxpayer must provide a written statement identifying the:

- Tax period(s)
- Type of Tax
- Specific penalties disputed
- Grounds for reasonable cause

POA Gillette requested that the failure to deposit penalties for the periods listed above be abated based on reasonable cause. The taxpayer is in the medical marijuana business in the State of Colorado. It's a cash business and they have been unable to find a bank that will allow them to open up a checking account. Based on this they have been paying their employees with cash and making 941 employment tax payments through the local IRS office or converting to money orders and sending to IRS campus locations. In making the 941 employment tax payments directly to the IRS the taxpayer is circumventing the use of Electronic Federal Tax Payment System (EFTPS) which became mandatory for businesses on January 1, 2011. Each time the taxpayer sends a payment directly to the IRS it generates a failure to deposit penalty under IRC §6656 for taxes paid directly to IRS. POA Gillette indicated that this is unfair and that the taxpayer is trying to comply with the tax requirements but unable due to actions beyond their control. IRM 21.2.1.47(4) states that if the participant does not want to use EFTPS, they can arrange for their tax professional, financial institution, payroll service or other trusted third party to make deposits on their behalf. It does not appear that the taxpayer has taken this step. In looking at their deposit history they have been late making many of the required monthly deposits due by the 15th day of each month for the periods listed above. The taxpayer has been incurring failure to deposit penalties since the second

quarter of 2010 and has not taken steps to comply. There is no indication that the taxpayer meets the criteria covered in IRM 20.1.1.3.2 to establish reasonable cause for penalty abatement on any of the periods listed above.

Collection Alternatives

A taxpayer may raise collection alternatives in a CDP hearing. In order for an installment agreement to be considered the taxpayer must identify the type of tax and periods to be included, payment date and payment amount. The taxpayer must be current compliance with all filing and deposit requirements to qualify for an installment agreement. The taxpayer is also required to provide a collection information statement to help determine ability to pay. You did not propose an installment agreement during the CDP process or provide the requested collection information statement Form 433B. In order for an offer in compromise to be considered the taxpayer must file form 656 and provide a collection information statement Form 433B. You did not file form 656 or provide collection information statement Form 433B. In order for an in-business corporation to be designated as currently not collectible, the financial analysis of the corporation must show that the taxpayer can make current tax deposits but be unable to pay on the back taxes. The taxpayer must also be current with all filing and paying requirements and demonstrate an ability to remain current prior the account being designated uncollectible. No financial information was provided and it cannot be documented that this account is currently uncollectible. There is no indication that bankruptcy has been filed.

Balancing Efficient Collection with Intrusiveness

IRC §6330 requires the Appeals Officer to consider whether the collection action balances the need for efficient collection of the unpaid taxes with the legitimate concern that such actions be no more intrusive than necessary.

In order for a federal lien to have priority against competing interests, the Service must file a NFTL pursuant to IRC §6323. This filing protects the Governments right of priority against certain third parties. It is my judgment that the NFTL balances the efficient collection of taxes with your legitimate concern that the collection action be no more intrusive than necessary.

Pursuant to Policy Statement 5-1, enforcement action is a necessary component of a voluntary tax system. It is my determination that the levy action, although intrusive is now the appropriate action.

Internal Revenue Service
Appeals Office
St. Paul Appeals
380 Jackson St Suite 600
St. Paul, MN 55101

Date: MAY 21 2014

RACHEL K GILLETTE
103 E SIMPSON ST, SUITE 200
LAFAYETTE CO 80026

Department of the Treasury

Person to Contact:

Jim Hallen
Employee ID Number: 0207839
Tel: 651-726-7445
Fax: 855-232-3990
Contact Hours: M-F 7-3:30PM

Refer Reply to:

AP:FE:STP:JEH

In Re:

ALLGREENS LLC
SSN/EIN Number:
XX-XXX3438

Tax Period(s) Ended:

12/2012 03/2013 06/2013

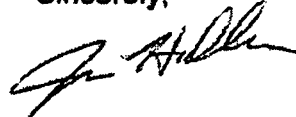
Dear Ms. RACHEL K GILLETTE:

We are sending you the enclosed material under the provisions of your power of attorney or other authorization we have on file. For your convenience, we have listed the name of the taxpayer to whom this material relates in the heading above.

If you have any questions, please call me at the above phone number.

Thank you for your cooperation.

Sincerely,



Jim Hallen
Settlement Officer

cc: ALLGREENS LLC