

1 Bench Opinion by Judge Maurice Foley  
2 Docket No. 1969-00L

October 19, 2000

3 THE CLERK: Now calling Docket No. 1969-00L,  
4 LaVonne Allen Hodgson.

5 THE COURT: I will now read into the record a  
6 bench decision on the case, LaVonne Hodgson, Docket  
7 No. 1969-00L.

8 The Court has decided to render oral findings of  
9 fact and opinion in this case, and the following represents  
10 the Court's oral findings of fact and opinion:

11 This bench opinion is made pursuant to the  
12 authority granted by Section 7459(b) of the Internal Revenue  
13 Code of 1986 as amended and Rule 152 of the Tax Court Rules  
14 of Practice and Procedure.

15 All section references are to the Internal Revenue  
16 Code in effect for the taxable year in issue, and all Rule  
17 references are to the Tax Court Rules of Practice and  
18 Procedure.

19 By notice of determination concerning collection  
20 action(s) under Section 6320 and/or 6330 dated January 19,  
21 2000, respondent determined that the proposed levy action  
22 was to be sustained.

23 The facts are as follows:

24 Certain facts have been stipulated by the parties.  
25 The stipulation of facts are adopted herein by this

1 reference. Other pertinent facts are:

2 Petitioner resided in Santa Maria, California, at  
3 the time the petition was filed.

4 Respondent issued a notice of deficiency relating  
5 to petitioner's 1994 tax year. Petitioner challenged  
6 respondent's determination by filing a petition with this  
7 Court.

8 Petitioner's liability was determined by this  
9 Court in its opinion, Hodgson v. Commissioner, T.C. Memo,  
10 1998-70.

11 Petitioner made payments on the 1994 deficiency  
12 pursuant to an installment agreement from November 3rd, 21-52  
13 1998, until June 2, 1999. In June 1999, respondent proposed 7-02  
14 that petitioner's installment agreement be defaulted because  
15 petitioner had not filed returns for his 1995, 1996, 1997,  
16 and 1998 tax years as required by the agreement.

17 Respondent sent a final notice/notice of intent to  
18 levy and notice of your right to a hearing on July 6, 1999.

19 Petitioner, on July 30, 1999, made a timely  
20 request for a collection due process hearing.

21 Hearings were held with the Appeals Officer on  
22 November 15, 1999, and January 5, 2000. At the hearings  
23 petitioner refused to discuss collection alternatives,  
24 arguing only that the assessment of the tax and penalties  
25 was illegal.

1           The Appeals Officer determined that the proposed  
2 levy and distraint action should be sustained.

3           Discussion of legal authorities:

4           Section 6330(d) provides for review of  
5 respondent's determination by the Court.

6           Section 6330(c)(2)(B) allows challenges to the  
7 existence or amount of the underlying liability only if the  
8 person did not receive a notice of deficiency or have an  
9 opportunity to dispute the liability.

10           In cases where the validity of the liability is  
11 not properly part of the appeal, the Court reviews  
12 respondent's administrative determination for abuse of  
13 discretion. See Davis v. Commissioner, 115 T.C. \_\_\_\_, \_\_\_\_,  
14 (slip opinion at 7); Goza v. Commissioner, 114 T.C. 176,  
15 181-182 (2000).

16           Petitioner previously litigated the amount and  
17 validity of the liability. See Hodgson v. Commissioner,  
18 T.C. Memo 1998-70. Accordingly, the validity of the  
19 liability is not subject to review in this proceeding and we  
20 review respondent's determination for abuse of discretion.

21           Petitioner contends that the assessment was not  
22 legal because he <sup>was</sup> not provided with a Form 23C.  
23 Respondent, however, provided petitioner with a certificate  
24 of assessments and payments.

25           The Appeals Officer's reliance on a certificate of

1 assessments and payments for verification of the assessment  
2 is not an abuse of discretion. See Davis v. Commissioner,  
3 supra (slip opinion at 8).

4 Accordingly, the Appeal Officer's determination was  
5 not an abuse of discretion.

6 Contentions we have not addressed are irrelevant,  
7 moot, or meritless.

8 Decision will be entered for respondent.

9 This concludes the Court's oral findings of fact  
10 and opinion in this case.

11 (Whereupon, at 4:10 p.m., the bench opinion in the  
12 above-entitled matter was adjourned.)

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## Hulshoff Ric D

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**From:** Herbert Donna F  
**Sent:** Tuesday, September 17, 2002 3:26 PM  
**To:** Hulshoff Ric D  
**Subject:** RE: Hodgson

Yes, please fax it. See my fax number under my name below.

**Donna F. Herbert**

Tel No. (805) 371-6702 (ext. 720)

Fax No. (805) 373-9866

-----Original Message-----

**From:** Hulshoff Ric D  
**Sent:** Tuesday, September 17, 2002 3:16 PM  
**To:** Herbert Donna F  
**Cc:** Schlei Jeffrey A  
**Subject:** RE: Hodgson

All I have in my personal files is a copy of the decision and transcript of the Bench Opinion; I don't know how (or if) it would have "cite." Would you like me to fax a copy to you? If so, give me a number and I'll do so directly.

**Ric D. Hulshoff, Attorney**  
**Area Counsel (SBSE), Los Angeles**  
213-894-3027 x139  
[ric.d.hulshoff@irscounsel.treas.gov](mailto:ric.d.hulshoff@irscounsel.treas.gov)

-----Original Message-----

**From:** Herbert Donna F  
**Sent:** Tuesday, September 17, 2002 3:12 PM  
**To:** Hulshoff Ric D  
**Subject:** RE: Hodgson

Ric, can I have the cite for the opinion? I want to cite to it in my responses to the admissions. Thanks. (I figured this might be shorter than looking it up.)

**Donna F. Herbert**

Tel No. (805) 371-6702 (ext. 720)

Fax No. (805) 373-9866

-----Original Message-----

**From:** Hulshoff Ric D  
**Sent:** Tuesday, September 17, 2002 1:36 PM  
**To:** Herbert Donna F  
**Cc:** Schlei Jeffrey A  
**Subject:** RE: Hodgson

The case was not originally assigned to me, but I got involved because there was a conference call with J. Foley on petitioner's motion to compel discovery, with respect to which our perceived resolution was that answers would be provided without being compelled. Two days later, much to our surprise, an order was issued threatening sanctions against respondent if we didn't comply and giving us one day to do so. The attorney assigned being out of the office, I took over and took the case to trial. Foley decided in our favor but issued a bench opinion only, although this was the first CDP case in our office at the time. The gist of the opinion was that the certificate of assessment was enough (per Davis) and, because he had a previous tax court case, the underlying deficiency could not be challenged. The only other wrinkle is that, when I received the case, I noted that the collection amount at issue involved frivolous return penalties, assessed pursuant to statute, but not subject to deficiency procedures. I immediately made a motion to dismiss for lack of jurisdiction as to those, which was granted. Finally, with respect to our responses, I would think with all the decisions that have come out in these CDP cases since they were prepared, we could be significantly more precise and concise than Mr. Duncan and I were. With that background, here are the two responses I

**WASHINGTON, DC 20217**

Respondent

Docket No. 1969-00L.

ENTERED: NOV 13 2000