

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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| LESLEY A. HUDSON, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Docket No. 13526-12S. |
| |) | |
| COMMISSIONER OF INTERNAL REVENUE, |) | |
| |) | |
| Respondent |) | |

ORDER

This case is calendared for trial at the Los Angeles, California trial session commencing September 9, 2013. On May 13, 2013, respondent filed a Motion to Dismiss for Lack of Jurisdiction and To Strike As To Taxable Year 2008 (Motion). Therein, respondent requests that this case be dismissed for lack of jurisdiction insofar as it relates to taxable year 2008, and that the reference to 2008 in paragraph 3 of the petition be stricken. Respondent advises that petitioner does not object to the granting of the Motion.

The petition in this case seeks review of respondent's deficiency determinations for petitioner's 2008 and 2009 taxable years. The petition was filed on May 29, 2012, and the envelope in which it was sent bears a legible postmark indicating May 22, 2012, as the date of mailing. Attached to the petition is a partial copy of a notice of deficiency issued to petitioner and her deceased spouse, Mark H. Hudson, for 2009, dated March 9, 2012. There was no notice of deficiency for 2008 attached to the petition. However, contrary to his position in the answer, respondent now concedes that a notice of deficiency for 2008 was mailed to petitioner (and her spouse) on October 26, 2011.

Generally, to invoke our deficiency jurisdiction for a given taxable year a taxpayer must file a petition for redetermination within 90 days after the Secretary mails a notice of deficiency for such year to the taxpayer at her last known address. Sec. 6213.¹ A timely petition is essential to this Court's jurisdiction and we must

¹Section references are to the Internal Revenue Code of 1986, as in effect for the years at issue.

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dismiss for lack of jurisdiction any case in which one is not present. See Monge v. Commissioner, 93 T.C. 22, 27 (1989).

Respondent attached to his Motion a copy of a notice of deficiency for 2008, dated October 26, 2011, addressed to petitioner and her spouse,² and a Substitute Form 3877 showing a postmark date stamp of October 25, 2011.³ A Form 3877 is a mailing list form of the U.S. Postal Service that is prepared and used by the IRS to identify items mailed by certified or registered mail. See Devlin v. Commissioner, T.C. Memo. 2012-145. Where the existence of a notice of deficiency is not disputed, a properly completed Form 3877 by itself is sufficient, absent evidence to the contrary, to establish that the notice was properly mailed to the taxpayer. Coleman v. Commissioner, 94 T.C. 82, 90-91 (1990).

Ninety days after October 26, 2011, was January 25, 2012. As that date was not a Saturday, Sunday, or legal holiday in the District of Columbia, it was the last day for timely filing a petition. Sec. 6213(a). Petitioner's petition, mailed on May 22, 2012, is untimely for purposes of invoking our deficiency jurisdiction with respect to 2008.

However, we will not dismiss the case as it relates to 2008 entirely, because we construe the petition as also seeking our review of petitioner's request for innocent spouse relief for that year. See sec. 6015(e). All claims in a petition should be broadly construed so as to do substantial justice, and a petition filed by a pro se litigant should be liberally construed. Rule 31(d); Gray v. Commissioner, 138 T.C. 295, 298 (2012). In the petition, petitioner references her filing of a request for innocent spouse relief for 2008 and 2009, and articulates reasons why she believes she should not be jointly and severally liable for the deficiencies asserted for those years. Respondent attached to the answer a copy of the Form 8857, Request for Innocent Spouse Relief, petitioner filed with respect to 2008 and 2009, which was stamped "received" by respondent's Innocent Spouse Cincinnati Service Center on September 23, 2011.

²The address on the notice of deficiency and Substitute Form 3877 is the same as the address petitioner used on her petition.

³For purposes of his Motion, respondent concedes that the date listed on the notice of deficiency, October 26, 2011, is the date of mailing.

Section 6015(e) provides an individual taxpayer the right to petition the Tax Court to determine the appropriate relief available to the taxpayer under section 6015, if such petition is filed at any time after the earlier of: (1) the date the Secretary mails a notice of determination with respect to a taxpayer's request for innocent spouse relief (so long as the petition is filed before the close of the 90th day after the date such a determination is mailed); or (2) the date which is 6 months after the date the taxpayer requests innocent spouse relief from the Secretary. Sec. 6015(e)(1)(A). Here, the parties agree that respondent has not issued a notice of determination with respect to petitioner's request for innocent spouse relief. Six months after September 23, 2011, was March 23, 2012; accordingly, the petition timely invoked our jurisdiction to determine whether innocent spouse relief is available to petitioner for 2008.

Because the petition was not postmarked within 90 days after respondent mailed the notice of deficiency for 2008, it was untimely for purposes of invoking our deficiency jurisdiction for that year. See sec. 6213(a). However, we construe the petition as also seeking review of petitioner's request for innocent spouse relief for 2008, for which purpose it was timely filed.⁴ See sec. 6015(e)(1)(A)(i)(II).

On the basis of the foregoing, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction and To Strike As To Taxable Year 2008, filed May 13, 2013, is granted insofar as it seeks to dismiss petitioner's challenge to the deficiency respondent determined for 2008, is denied insofar as it seeks to dismiss review of petitioner's request for innocent spouse relief for 2008, and is denied insofar as it seeks to strike the reference to taxable year 2008 in paragraph 3 of the petition. It is further

⁴The record indicates that in April 2011 petitioner filed a Form 843, Claim for Refund and Request for Abatement, wherein she requested interest abatement under sec. 6404(e) for 2008. Consideration of petitioner's interest abatement claim in this proceeding is premature, as there had been no assessment of interest at the time she requested abatement, and there is no evidence that respondent issued to petitioner a final determination not to abate interest for 2008. See Wright v. Commissioner, T.C. Memo. 1998-224.

ORDERED that this case is dismissed for lack of jurisdiction as to the deficiency respondent determined for petitioner's 2008 taxable year.

(Signed) Joseph H. Gale
Judge

Dated: Washington, D.C.
August 2, 2013