

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Sarah A. Cornish,)	
)	DL
Petitioner,)	
)	
v.)	Docket No. 13387-13 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This case is before the Court upon respondent’s Motion To Dismiss for Lack of Jurisdiction, filed July 19, 2013, as Supplemented January 6, 2014.

On January 7, 2013, respondent issued petitioner and Cornell D.M.J. Cornish a notice of deficiency for tax year 2010. On March 20, 2013, Cornell D.M.J. Cornish filed a petition to commence the case at Docket No. 6557-13 challenging that notice of deficiency. On May 17, 2013, petitioner filed an Amendment to Petition in the case at Docket No. 6557-13 ratifying and affirming the petition filed in that case.

On May 17, 2013, petitioner’s petition was filed to commence this case. In the petition petitioner seeks review of a Notice of Determination Concerning Collection Action issued to her for tax year 2010. Attached to the petition is a Notice CP22E issued by respondent to petitioner. No Notice of Determination Concerning Collection Action is attached to the petition.

On July 19, 2013, respondent filed a Motion To Dismiss for Lack of Jurisdiction in this case on the ground that no notice of determination under section 6320 or 6330 of the Internal Revenue Code (I.R.C.) or other notice of determination has been issued to petitioner for tax year 2010 that would confer jurisdiction upon the Court. Respondent states in his motion that on January 7, 2013, he issued petitioner and Cornell D.M.J. Cornish a notice of deficiency for tax year 2010. The notice of deficiency is being addressed in the case at Docket No. 6557-13. Respondent further states that on the basis of diligent search of his

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records, he has determined that no notice of determination concerning collection action or any other notice that could confer jurisdiction upon this Court was issued to petitioner for tax year 2010.

On December 13, 2013, respondent's Supplement to the Motion To Dismiss for Lack of Jurisdiction was lodged, and on January 6, 2014, it was filed. Respondent states in the Supplement that on the basis of diligent search conducted of respondent's records, respondent has determined that petitioner has not filed a claim for relief from joint and several liability for tax year 2010 and respondent has not issued petitioner a final determination under section 6015, I.R.C.

On December 11, 2013, petitioner lodged a Motion To Strike Motion To Dismiss. It was filed on January 6, 2014. The Motion To Strike Motion To Dismiss is in the nature of an objection to respondent's motion, and the Court recharacterized it as such. On December 23, 2013, petitioner filed a Reply to Respondent's Supplement.

This Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In a case seeking review of a determination under section 6320 or 6330 of the I.R.C., the Court's jurisdiction to review certain collection activity of the Internal Revenue Service (I.R.S.) depends on (1) the issuance of a valid notice of determination by an I.R.S. Appeals Officer under I.R.C. section 6320 or 6330, and (2) the timely filing by the taxpayer of a petition within 30 days of that Appeals Office determination. See Smith v. Commissioner, 124 T.C. 36, 38-39 (2005); Offiler v. Commissioner, 114 T.C. 492 (2000); I.R.C. secs. 6320(c), 6330(d)(1); Rule 330(b), Tax Court Rules of Practice and Procedure. The record establishes that no notice of determination concerning a collection action was issued to petitioner.

The Court's jurisdiction to review respondent's determination disallowing a claim for relief from joint and several liability on a joint return under section 6015, I.R.C., generally is dependent upon the Commissioner's issuance of valid notice of final determination and a timely petition for review of the determination. I.R.C. sec. 6015(e); Ewing v. Commissioner, 118 T.C. 494 (2002). In the alternative, a taxpayer may invoke the Court's jurisdiction under section 6015, I.R.C., if the Commissioner fails to issue a final notice of determination within 6 months after the taxpayer has filed an election for relief from joint and several liability. I.R.C. sec. 6015(e)(1)(A)(i)(II).

In his Reply to Respondent's Supplement, petitioner contends that she in fact requested relief under section 6015, I.R.C. She points to her phone records and contends that she requested relief by calling respondent's phone numbers and writing a letter to the "Director of the I.R.S." as well as during discussions with respondent's employees.

Section 1.6015-5, Income Treas. Regs., provides that to request relief, the requesting spouse must file a Form 8857, Request for Innocent Spouse Relief, submit a written statement containing the same information required on the Form 8857, or submit information in the manner prescribed by the Treasury and I.R.S. in forms. The Instructions for the Form 8857 further detail how such relief should be requested. They provide the address for mailing the request and fax numbers. Petitioner did not request relief in the manner specified in the Instructions for Form 8857.

The record in this case establishes that no notice of determination sufficient to invoke the Court's jurisdiction has been issued to petitioner nor has petitioner properly submitted a request for relief from joint and several liability with respondent. Further, petitioner's notice of deficiency is being addressed in the case at Docket No. 6557-13. Therefore, to the extent petitioner seeks the redetermination of her liability for tax year 2010, this case is duplicative of the petition filed in the case at Docket No. 6557-13. Accordingly, it is

ORDERED that, on the Court's own motion, so much of this case as purports to be a petition for redetermination of deficiency for tax year 2010 is closed due to duplication with the case at Docket No. 6557-13. It is further

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction, as Supplemented is granted in that so much of this case as purports to be a petition for review of a Notice of Determination Concerning Collection Action and a final determination under section 6015, I.R.C., is dismissed for lack of jurisdiction.

(Signed) Michael B. Thornton
Chief Judge

ENTERED: **JAN 22 2014**