

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

KVC

INLAND EMPIRE COLON & RECTAL)
SURGEONS,)
)
Petitioners,)
)
v.) Docket No. 3624-13S
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This case is before the Court on respondent's Motion to Dismiss for Lack of Jurisdiction, filed October 28, 2013. Petitioner's objections to respondent's motion are embodied in its response, filed December 2, 2013. A hearing was conducted on respondent's motion in Los Angeles, California, on January 27, 2014. Counsel for respondent appeared and argued in support of the motion. An officer of petitioner appeared on petitioner's behalf, see Rule 24(b),¹ and opposed it. Following the hearing, and at the Court's request, respondent's motion was supplemented on February 4, 2014.

According to the petition, petitioner should not, for various reasons, be held liable for a section 6699 penalty. A letter dated January 30, 2013 (letter), is attached to the petition. The letter, addressed to petitioner from respondent's Appeals Office, denies petitioner's request that the penalty be abated. The letter goes on to advise petitioner of its refund options.

The letter is not a notice of deficiency within the meaning of section 6212--section 6699 penalties are not subject to the deficiency procedures. See secs. 6211 et seq., and 6699(d). Neither is the letter a notice of determination within the meaning of section 6330(d)--the letter says nothing about a proposed collection

¹Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov. Section references are to the Internal Revenue Code of 1986, as amended, in effect for the relevant period.

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action or petitioner's rights in response to any proposed collection action. See secs. 6320 and 6330. Otherwise, we know of no provision of the Internal Revenue Code that would support the Court's jurisdiction over the section 6699 penalty placed in dispute in this proceeding.

Petitioner's reliance on Ensync Technologies v. Commissioner, T.C. Summary Opinion 2012-55 as support for our jurisdiction here is misplaced. That case involved the taxpayer's liability for a section 6699 penalty, but it was commenced in response to a notice of determination issued pursuant to procedures contemplated in section 6330, and the Court's jurisdiction under the circumstances of that case rests in section 6330(d). As noted above, that is not the situation here. As of the date that respondent's motion was supplemented, it does not appear that respondent has made a determination with respect to the collection of the section 6699 penalty here in dispute that could result in this Court's jurisdiction over that penalty. See sec. 6330(c)(2)(B), (d).

To reflect the foregoing, and for the reasons set forth in respondent's motion, as supplemented, it is

ORDERED that respondent's motion, as supplemented, is granted, and this case is dismissed for lack of jurisdiction.

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED: **MAY 23 2014**