

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

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| REGINALD ALLEN PORTER,            | ) |                      |
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| Petitioner,                       | ) |                      |
|                                   | ) |                      |
| v.                                | ) | Docket No. 26218-14. |
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| COMMISSIONER OF INTERNAL REVENUE, | ) |                      |
|                                   | ) |                      |
| Respondent                        | ) |                      |
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**ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

The petition underlying this proceeding was filed on November 3, 2014, and alleged dispute with a notice of deficiency and a notice of determination concerning relief from joint and several liability. Taxable years 2006, 2007, 2008, 2009, 2011, 2012, and 2013 were cited as the years in dispute, and August 28, 2014, was given as the date of the notice(s) challenged. Attached to the petition were copies of: (1) A Letter 238 from the Internal Revenue Service (IRS) dated May 22, 2014, rejecting petitioner’s offer in compromise in the amount of \$1,000; (2) a Form 13711, Request for Appeal of Offer in Compromise, dated June 10, 2014; and (3) a letter from the IRS dated June 11, 2014, acknowledging receipt of the just-referenced Form 13711.

On January 14, 2015, respondent filed a Motion to Dismiss for Lack of Jurisdiction, on the grounds: (1) As to 2006, 2007, and 2009, that the petition was not filed within the time prescribed by section 6213(a) or 7502 of the Internal Revenue Code (I.R.C.) with respect to notices of deficiency for those years, and respondent has not made any other determination for 2006, 2007, and 2009 that would confer jurisdiction on the Court; and (2) as to 2008, 2011, 2012, and 2013, no notice of deficiency, as authorized by section 6212 and required by section 6213(a), I.R.C., to form the basis for a petition to this Court, has been sent to petitioner with respect to those years, nor has respondent made any other determination with respect to petitioner's tax years 2008, 2011, 2012, and 2013 that would confer jurisdiction on the Court. Respondent attached to the motion copies of notices of deficiency for 2006, 2007, and 2009, dated March 12, 2012, May 21, 2012, and May 21, 2012, respectively.

**SERVED Feb 19 2015**

Petitioner was served with copy of respondent's motion and, on January 20, 2015, filed a notice of objection. In that document, petitioner reiterated that this case involved "appeal to OIC". Likewise, he again expressly referenced relief from joint and several liability, paralleling similar references to relief under section 6015, I.R.C., that had been made in the petition and attachments thereto. However, no further supporting notices from the IRS or other documentation was attached. At that juncture, insofar as respondent's motion to dismiss had made no explicit mention of the provisions of section 6015, I.R.C., the Court directed respondent to file a response to petitioner's notice of objection. Respondent so filed a response on February 13, 2015. That response advised, inter alia, that no notice of determination concerning relief from joint and several liability pursuant to section 6015(e)(1)(A)(i)(I), I.R.C., had been issued to petitioner with respect to 2006, 2007, 2008, 2009, 2011, 2012, or 2013. A search of IRS records had further shown no indication of any receipt by respondent of a request for relief under section 6015 with respect to any of the just-listed years, such as would be required as a prerequisite for jurisdiction under section 6015(e)(1)(A)(i)(II), I.R.C. Finally, noting that relief under section 6015, I.R.C., is applicable only in situations where taxpayers have filed tax returns using the married filing jointly status, respondent stated that petitioner did not file a joint return for any of the years in issue.

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 the redetermination of a deficiency, the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Brown v. Commissioner, 78 T.C. 215, 220 (1982). In this regard, section 6213(a), I.R.C., provides that the petition must be filed with the Court within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day). The Court has no authority to extend this 90-day (or 150-day) period. Joannou v. Commissioner, 33 T.C. 868, 869 (1960). However, if the conditions of section 7502, I.R.C., are satisfied, a petition which is timely mailed may be treated as having been timely filed.

Similarly, in a case seeking review of a determination under section 6320 or 6330, I.R.C., the jurisdiction of the Court depends, in part, upon the issuance of a valid notice of determination by the IRS Office of Appeals under section 6320 or 6330, I.R.C. Secs. 6320(c) and 6330(d)(1), I.R.C.; Rule 330(b), Tax Court Rules of Practice and Procedure; Offiler v. Commissioner, 114 T.C. 492 (2000). A condition precedent to the issuance of a notice of determination is the requirement that a taxpayer have requested a hearing before the IRS Office of Appeals within the 30-day period specified in section 6320(a) or 6330(a), I.R.C., and calculated with reference to an underlying Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 or Final Notice - Notice of Intent To Levy and Notice of Your Right to a Hearing.

A late or untimely request for a hearing nonetheless made within a one-year period calculated with reference to one of the types of final notice of lien or levy just described will result only in a so-called equivalent hearing and corresponding decision letter, which decision letter is not a notice of determination sufficient to invoke this Court's jurisdiction under section 6320 or 6330, I.R.C. Kennedy v. Commissioner, 116 T.C. 255, 262-263 (2001). A request for a hearing made after said one-year period will be denied, and neither a hearing under section 6320

or 6330, I.R.C., nor an equivalent hearing will be afforded. Secs. 301.6320-1(i)(2), Q&A-I7, I11; 301.6330-1(i)(2), Q&A-I7, I11, Proced. & Admin. Regs.

Where a hearing has been timely requested in response to one of the two types of notices set forth supra, the IRS Office of Appeals is directed to issue a notice of determination entitling the taxpayer to invoke the jurisdiction of this Court. In that context, section 6330(d)(1), I.R.C., specifically provides that the petition must be filed with the Tax Court within 30 days of the determination. The Court has no authority to extend this 30-day period. Weber v. Commissioner, 122 T.C. 258, 263 (2004); McCune v. Commissioner, 115 T.C. 114, 117-118 (2000). However, if the conditions of section 7502, I.R.C., are satisfied, a petition which is timely mailed may be treated as having been timely filed.

Lastly, as pertinent here, jurisdiction under section 6015(e), I.R.C., for a “stand alone” proceeding is likewise predicated in part on issuance of a determination by the IRS under that section or the failure by the IRS to issue such a determination within 6 months of a request for relief from joint and several liability on a joint return. Sec. 6015(e)(1)(A), I.R.C. Otherwise, the Court may consider section 6015, I.R.C., relief only when raised in the context of a timely deficiency or collection case before the Court under sections 6213 or 6330, I.R.C. In a similar vein, to the extent that any of petitioner’s filings could be interpreted to suggest a claim for relief from liability attributable to community income under section 66(c), I.R.C., the Court may consider such claims only when raised in the context of a timely deficiency or collection case before the Court under sections 6213 or 6330, I.R.C. Conversely, section 66(c), I.R.C., does not provide for jurisdiction permitting a taxpayer to file a “stand alone” petition in response to a denial of relief under that statute. Bernal v. Commissioner, 120 T.C. 102, 107-108 (2003).

Review of the record in this case indicates that petitioner submitted an offer in compromise dated September 13, 2013, in the amount of \$1,000. The offer was rejected by a letter dated May 22, 2014. Petitioner the appealed that rejection administratively to the IRS Office of Appeals on June 10, 2014, but the Office of Appeals rejected the offer on or about August 28, 2014. Petitioner apparently sees his claim for spousal relief as intertwined in some manner with the request for an offer in compromise.

Suffice it to say at this point that the various letters rejecting petitioner’s offer in compromise, and any potential claim for relief from spousal liability subsumed therein, do not constitute, and cannot substitute for, a notice of deficiency issued pursuant to section 6212, I.R.C., or a notice of determination issued pursuant to section 6320, 6330, and/or 6015, I.R.C. Only a narrow class of specified determinations by the IRS can open the door to the Tax Court. Although this Court has reviewed offers in compromise raised as a collection alternative in the context of a proceeding under sections 6320 and/or 6330, I.R.C., and as to which the disposition was incorporated in a formal notice of determination issued under those sections, the record does not show that to be the scenario here. Petitioner’s situation, in contrast, appears to concern a “stand alone” offer in compromise solely under section 7122, I.R.C., outside the context of a section 6320 and/or 6330, I.R.C., collection case and over which no statute confers jurisdiction for review by this Court.

Insofar as concerns a deficiency proceeding, petitioner has at no time so much as alluded to or otherwise addressed the critical matter of the timeliness of the original petition. Notably, the notices were addressed to petitioner's current address of record. As previously noted, the petition herein was filed on November 3, 2014, having been received in an envelope bearing postmark dated October 29, 2014. These dates are more than two years after the notices of deficiency for tax years 2006, 2007, and 2009 were mailed. Thus, on this record, respondent's contentions regarding timeliness stand un rebutted.

In summary, the Court has no authority to extend that period provided by law for filing a petition "whatever the equities of a particular case may be and regardless of the cause for its not being filed within the required period." Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, since petitioner has failed to establish that the petition was mailed or filed within the required period with respect to the notices of deficiency for 2006, 2007, and 2009 and has failed to establish the existence of any other determination by the IRS that could support this litigation, this case must be dismissed for lack of jurisdiction. The premises considered, it is

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction, filed January 14, 2015, is granted, and this case is dismissed for lack of jurisdiction.

**(Signed) Michael B. Thornton**  
**Chief Judge**

ENTERED: **FEB 19 2015**