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

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UNITED STATES TAX COURT
WASHINGTON, DC 20217

MERLENE GODFREY,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 21507-13 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This matter is before the Court on the parties' cross-motions to dismiss for lack of jurisdiction. Respondent filed a Motion to Dismiss for Lack of Jurisdiction on November 22, 2013, asserting that no notice of determination concerning a collection action under section 6320 or 6330[1] was issued to petitioner for the taxable years 2008, 2009, and 2010 (years in issue), nor has respondent made any other determination with respect to those years, that would permit her to invoke the Court's jurisdiction. On December 11, 2013, petitioner filed a response in opposition to respondent's motion to dismiss, and on February 18, 2014, respondent filed a reply thereto. On February 5 and 23, 2015, respondent filed a first supplement and a second supplement to his motion to dismiss for lack of jurisdiction, respectively.

On February 12, 2014, petitioner filed a Motion to Dismiss for Lack of Jurisdiction asserting that respondent failed to issue to her a Final Notice of Intent to Levy and Notice of Your Right to a Hearing for the years in issue, and, therefore, she was denied the opportunity to submit a request for administrative review with the Internal Revenue Service (IRS) Office of Appeals (Appeals Office). On March 18, 2014, respondent filed an objection to petitioner's motion to dismiss.[2]

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[1]All section references are to the Internal Revenue Code of 1986, as amended.

[2]Although the Court encouraged the parties to attempt to settle the case administratively, they were unable to do so.

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The following background facts are not in dispute or are drawn from the record. In September 2011, Tax Defense Network (TDN) submitted to the IRS two Forms 8821, Tax Information Authorization, executed by petitioner, identifying TDN as her representative for the years in issue. In early March 2012, the IRS received from petitioner a Form 2848, Power of Attorney and Declaration of Representative, appointing John J. Genova, petitioner's counsel of record in this case, as her attorney in fact for the years in issue. Petitioner did not check the box on the Form 2848 directing respondent to send copies of notices and communications to Mr. Genova. Thereafter, petitioner received correspondence from the IRS which she then forwarded to Mr. Genova. Realizing that the Form 2848 did not direct respondent to send copies of notices and communications to him, Mr. Genova checked the "notice" box on the original Form 2848 and sent a copy of it by facsimile transmission to the IRS on May 19, 2012.[3]

On July 18, 2012, Mr. Genova sent by facsimile transmission a second Form 2848 to the IRS bearing petitioner's signature and directing that copies of notices and communications concerning the years in issue be sent to Mr. Genova. The IRS processed the Form 2848 on July 26, 2012, and considered it to be effective that day. Three days earlier, however, on July 23, 2012, respondent mailed to petitioner at her last known address a Final Notice of Intent to Levy and Notice of Your Right to a Hearing (levy notice) for the years in issue. Respondent also mailed a copy of the levy notice to TDN in accordance with the Forms 8821 on file. Transcripts of petitioner's accounts for the years in issue and U.S. Postal Service "Track and Confirm" records indicate that the levy notice sent to petitioner's last known address was "refused or unclaimed."

Roughly one year later, Mr. Genova learned that respondent had mailed the levy notice to petitioner. On July 30, 2013, he submitted to the IRS Appeals Office a Form 12153, Request for a Collection Due Process or Equivalent Hearing. On August 28, 2013, the Appeals Office informed petitioner that she was not entitled to an administrative hearing or a so-called equivalent hearing under section 6330. Petitioner subsequently commenced this case by filing a petition for review of a lien or levy action with the Court under section 6330.

The Tax Court is a court of limited jurisdiction, and we may exercise jurisdiction only to the extent authorized by Congress. Naftel v. Commissioner, 85

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[3]Petitioner did not re-sign the Form 2848 before Mr. Genova sent it to the IRS. Respondent asserts that the Form 2848 was not valid without petitioner's signature.

T.C. 527, 529 (1985). The Court's jurisdiction under section 6330 depends on the issuance of a valid notice of determination and the timely filing of a petition for review. See Orum v. Commissioner, 123 T.C. 1 (2004), aff'd, 412 F.3d 819 (7th Cir. 2005); Sarrell v. Commissioner, 117 T.C. 122, 125 (2001). In the absence of a valid notice of determination issued in accordance with section 6330, this Court lacks jurisdiction. As relevant to this case, however, a necessary predicate for the issuance of a notice of determination is the issuance of a valid levy notice to the taxpayer at his or her last known address. Sec. 6330(a)(2)(C). If the Commissioner fails to issue a valid levy notice, depriving the taxpayer of the opportunity to submit a timely request for administrative review, we will dismiss a petition for review for lack of jurisdiction on the ground the underlying collection action is improper. See, e.g., Kennedy v. Commissioner, 116 T.C. 255, 261 (2001).

Consistent with the foregoing, and in the context of the present case, it follows that the Court lacks jurisdiction to hear petitioner's case. The only issue for decision is the proper basis for dismissal (i.e., the lack of a notice of determination (as respondent contends) or the lack of a valid levy notice (as petitioner contends). See Buffano v. Commissioner, T.C. Memo. 2007-32.

A levy notice normally must be given in person, left at the person's dwelling or usual place of business, or sent by certified or registered mail to the person's last known address. Secs. 6330(a)(2), 6331(d)(2); secs. 301.6330-1(a), 301.6331-2(a)(1), Proced. & Admin. Regs. A levy notice properly sent to the taxpayer's last known address by certified or registered mail is sufficient to start the 30-day period within which the taxpayer may request an Appeals Office hearing, and actual receipt of such levy notice is not a prerequisite to the validity of that notice. See sec. 301.6330-1(a)(3), Q&A-A9, Proced. & Admin. Regs.; see also Mannella v. Commissioner, 132 T.C. 196, 199-200 (2009), rev'd on other grounds, 631 F.3d 114 (3d Cir. 2011).

The record shows that respondent mailed the levy notice for the years in issue to petitioner's last known address by certified mail. Petitioner failed to claim the notice, and it was returned to the IRS undelivered. The fact that petitioner did not actually receive the levy notice does not render the notice invalid. Petitioner nevertheless contends that the levy notice is invalid because respondent failed to mail a copy to Mr. Genova. Respondent asserts that the Form 2848 appointing Mr. Genova as petitioner's representative was ineffective to revoke or override the Form 8821 that petitioner previously submitted to the IRS appointing TDN as her

representative. As respondent sees it, he properly mailed copies of the levy notice to petitioner (at her last known address) and to TDN. We agree.

In the context of deficiency cases under section 6213(a), we have held that copies of correspondence sent pursuant to a request in a power of attorney are a matter of courtesy and in no way affect the mailing requirements of section 6212. See McDonald v. Commissioner, 76 T.C. 750, 752-754 (1981). It is established law that "the failure of the respondent to send a copy of the notice of deficiency to the taxpayer's counsel, pursuant to a request contained in a power of attorney filed with the respondent, does not affect the time within which the taxpayer must file a petition with this Court if a notice of deficiency has been sent to the taxpayer by * * * [certified] mail to his last known address." Allen v. Commissioner, 29 T.C. 113 (1957); see also Houghton v. Commissioner, 48 T.C. 656 (1967).

The same rationale applies in the context of a petition for review of the lien or levy action under sections 6320 and 6330. Regardless of whether Mr. Genova should have received copies of IRS correspondence, respondent mailed the levy notice to petitioner at her last known address. Respondent therefore met the mailing requirements under section 6330, and the levy notice is valid. No notice of determination sufficient to confer jurisdiction upon this Court has been issued to petitioner. Accordingly, this case must be dismissed for lack of jurisdiction in accordance with respondent's motion to dismiss.

Upon due consideration, it is

ORDERED that petitioner's Motion to Dismiss for Lack of Jurisdiction, filed on February 12, 2014, is denied. It is further

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction filed November 22, 2013, as supplemented, is granted, and this case is dismissed for lack of jurisdiction on the ground that no notice of determination concerning collection action under section 6320 or 6330 was issued to petitioner for tax years 2008, 2009, and 2010, nor has respondent made any other determination with respect to those years that would permit petitioner to invoke the Court's jurisdiction.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

ENTERED: **MAR 24 2015**