

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

BERNARD HOPE,)	
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Petitioner,)	
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v.)	Docket No. 7198-15S.
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COMMISSIONER OF INTERNAL REVENUE,)	
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Respondent)	
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ORDER OF DISMISSAL FOR LACK OF JURISDICTION

The petition underlying the above-docketed proceeding was filed on March 9, 2015, and alleged dispute with a notice of deficiency for the 2012 and 2013 taxable years. Attached were a series of letters from Internal Revenue Service (IRS): (1) a Letter 525, dated April 22, 2014, proposing changes to petitioner’s 2012 return and attaching a Form 4549, Income Tax Examination Changes, and a Form 886-A, Explanation of Items, detailing those changes; (2) a Letter 692, dated October 6, 2014, affirming the prior proposals for 2012; (3) a Letter 525, dated October 6, 2014, proposing changes to petitioner’s 2013 return and attaching a Form 4549 and a Form 886-A detailing those changes; (4) a Letter 3501, dated January 20, 2015, advising that the IRS was still reviewing information sent by petitioner regarding 2013; and (5) a Letter 692, dated February 17, 2015, affirming the prior proposals for 2013. The envelope in which the petition had been received by the Court bore a postmark dated March 2, 2015.

Thereafter, on May 14, 2015, respondent filed a Motion To Dismiss for Lack of Jurisdiction, on the ground that, as of the date the petition herein was filed, no notice of deficiency, as authorized by section 6212 and required by section 6213(a) of the Internal Revenue Code (I.R.C.) to form the basis for a petition to this Court, had been sent to petitioner with respect to the 2012 and 2013 taxable years, nor had respondent made any other determination with respect to petitioner’s tax years 2012 and 2013 that would confer jurisdiction on the Court as of that date. Respondent further explained that notices of deficiency for 2012 and 2013, copies of which were attached to the motion, had been issued to petitioner on March 10 and March 30, 2015, respectively.

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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 issuance by the Commissioner of a valid notice of deficiency to the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Frieling v. Commissioner, 81 T.C. 42, 46 (1983). The notice of deficiency has been described as “the taxpayer’s ticket to the Tax Court” because without it, there can be no prepayment judicial review by this Court of the deficiency determined by the Commissioner. Mulvania v. Commissioner, 81 T.C. 65, 67 (1983). The jurisdiction of the Court in a deficiency case also 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 alter or 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.

Petitioner was served with a copy of respondent’s motion to dismiss and on May 28, 2015, filed a notice of objection. Therein, petitioner explained that reliance had been placed on a statement in the Form 886-A accompanying the Letter 525 dated October 6, 2014, and reading as follows: “Your time to petition the United States Tax Court will end on 03/02/2015. However you may continue to work with us to resolve your tax matter, but we cannot extend your time to petition the United States Tax Court beyond 03/02/2015.” Petitioner additionally emphasized, and attached supporting documentation corroborating, that the petition had been mailed via the United States Postal Service on March 2, 2015. Given those circumstances, petitioner maintained that respondent’s attempts now to characterize the just-quoted statement as erroneous were irrelevant and disingenuous.

Thus, a parsing of the record in this case reveals that, while it is clear petitioner has been engaged in an extensive and ongoing correspondence with the IRS regarding multiple taxable years, respondent’s jurisdictional allegations stand un rebutted. Critically, none of the communications reflected in the record of this case constitutes, or can substitute for, a notice of deficiency issued pursuant to sections 6213, I.R.C., as of the date the petition herein was filed. None of the various IRS letters and forms supplied by petitioner which predated the petition fall within the narrow class of specified determinations that can open the door to the Tax Court. Moreover, while the exceptions contained in the present record, i.e., the March 10, 2015, and March 30, 2015, notices of deficiency for 2012 and 2013, constitute proper jurisdictional prerequisites, they nonetheless cannot retroactively validate a petition over which the Court had no basis for jurisdiction at the time originally filed. Stated otherwise, because the notices were issued after the petition was filed on March 9, 2015, the Court is unable to exercise jurisdiction to consider the new notices in the existing case.

Moreover, it is equally well settled that where the Commissioner’s representatives provide erroneous advice based upon a mistaken interpretation of the law, courts and the Commissioner are not bound by the agent’s statements and must follow the applicable statutes,

regulations, and caselaw. See, e.g., Dixon v. United States, 381 U.S. 68, 72-73 (1965); Auto. Club of Mich. v. Commissioner, 353 U.S. 180, 183 (1957); Neri v. Commissioner, 54 T.C. 767, 771-772 (1970). Consequently, the same result must obtain regardless of whether the jurisdictional question is later raised by the Commissioner or by the Court sua sponte. Moreover, despite its superficial appeal, it has long been the rule that the doctrine of equitable estoppel is unavailable in these circumstances. As this Court has stated, an “estoppel argument must fail for the simple reason that the doctrine of estoppel cannot create jurisdiction where none otherwise exists.” Energy Res., Ltd. v. Commissioner, 91 T.C. 913, 917 (1988).

However, review of Court records reveals that an available remedy for petitioner has been preserved. Specifically, the Court on June 15, 2015, received from petitioner a new petition for 2012 and 2013, bearing a postmark dated June 8, 2015, and thereby timely within the period prescribed by section 6213(a) or 7502, I.R.C., as to the notices of deficiency for both years. That petition was filed to commence a new case at Docket No. 15321-15S.

Hence, in summary and applying the foregoing principles, the record in this litigation fails to establish that any notice deficiency had been sent to petitioner, as of the date the petition in Docket No. 7198-15S was filed, for the taxable years 2012 and 2013. Thus, the Court lacks jurisdiction in the case at 7198-15S to review any adjustments determined by respondent in regard to those taxable periods. Congress has granted the Tax Court no such authority as to 2012 and 2013 in the circumstances evidenced by this proceeding, regardless of the merits of petitioner’s complaints, and this case at Docket No. 7198-15S must be dismissed for lack of jurisdiction. Instead, petitioner’s arguments will be considered in a new and separate case at Docket No. 15321-15S, as explained in this Order.

The premises considered, it is

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

(Signed) Michael B. Thornton
Chief Judge

ENTERED: **JUN 23 2015**