

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

CAR WERKS LLC., DAVID M. PALMER,	)	
SOLE MEMBER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 12067-15 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	

**ORDER**

Pending in this action is a motion to change or correct the caption. This type of a motion is typically a mundane matter that provokes no controversy. Such is not the case here, however, as the following will attest:

Background

On May 11, 2015, a Petition For Lien Or Levy Action (Collection Action) was filed with the Court in the sole name of David M. Palmer as the petitioner, whose personal taxpayer identification number (i.e., Social Security number) was listed in paragraph 3 of the petition. Paragraph 2 of the petition states that petitioner disagrees with the determination of the IRS for the years or periods “2012-2014” in a notice dated April 16, 2015. The only notice attached to the petition as an exhibit is a Notice Of Determination, which is dated April 16, 2015, but which is addressed not to David M. Palmer but to Car Werks LLC. The Notice Of Determination, which sustains the filing of a notice of Federal tax lien, reflects the employer identification number of Car Werks LLC and references two calendar quarters (i.e., the 4<sup>th</sup> quarter of 2012 and the 1<sup>st</sup> quarter of 2013). In addition, although paragraph 4 of the petition references Car Werks LLC, it identifies “the taxpayer” not as the LLC but rather as David M. Palmer, who is described as the

sole member of the LLC. Further, the gist of paragraph 4 appears to allege damage suffered by David M. Palmer in his individual capacity from the filing of the lien,<sup>1</sup> and the relief requested by him is “\$350,000 in damages from IRS for malicious lien filing.” Finally, the petition was subscribed solely by counsel who is admitted to practice before this Court.

Shortly after the petition was filed, the Court sua sponte amended the caption from “David M. Palmer, Petitioner” to “Car Werks LLC, David M. Palmer, Sole Member, Petitioner”. Contemporaneously, and on the basis that the petitioning party in this case is the LLC and not David M. Palmer in his individual capacity, the Court issued an Order For Ownership Disclosure Statement pursuant to Tax Court Rule 20(c). As of the date of the instant Order there has been no compliance with the Order For Ownership Disclosure Statement.

On May 29, 2015, counsel for petitioner filed a Motion To Change Or Correct Caption, requesting that the Court “restore the original caption to the case ‘David M. Palmer, Petitioner v. Commissioner of Internal Revenue, Respondent’.” The motion consists of the following 6 numbered paragraphs:

1. This case involves a lien filed by the IRS against David M. Palmer as an individual taxpayer, nor as a member of Carwerks, LLC;

2. Through the entire administrative appeal process the appeals have been by David M. Palmer as an individual taxpayer;

3. The petition to this Court is in the name of David M. Palmer individually, as his SSN is provided on the petition and not the tax id of Carwerks, LLC;

4. The Notice of Determination attached to petitioner’s petition is in the name of Carwerks, LLC, but petitioner has no control over the errors made by the IRS. This case is not about Carwerks, but about David M. Palmer, individual taxpayer;

5. Petitioner objects to this Court changing the caption of the case, presuming a petitioner error, rather than first checking with

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<sup>1</sup> The paragraph alleges, inter alia, that the IRS “filed a lien against Carwerks and taxpayer’s private property.” (Emphasis added.)

petitioner. His petition is in his name as an individual taxpayer for a reason;

6. If the current caption is maintained, the respondent will argue that, based on the caption, this Court has no in personam jurisdiction over David M. Palmer, taxpayer, and the issue will become the lien filed against Carwerks, LLC rather than the lien filed against David M. Palmer, individual taxpayer.

On June 22, 2015, respondent filed a Response, objecting to the granting of the aforementioned motion “on the grounds that the proper Petitioner in this case is Car Werks LLC, David M. Palmer, Sole Member, and not David M. Palmer, individually.” The Response includes the following numbered paragraphs:

3. On or about September 15, 2014, Respondent filed a NFTL [notice of Federal tax lien] in the name of “Car Werks LLC, David Palmer, Sole Member” listing the liabilities at issue. Car Werks’ Employer Identification Number is listed on the NFTL as taxpayer's ID Number. Mr. Palmer’s SSN does not appear on the NFTL. \* \* \*

4. On or about September 16, 2014, Respondent mailed to Car Werks a Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320.

5. Car Werks timely requested a Collection Due Process Hearing, which was held by a Settlement Officer with Respondent’s Office of Appeals in Las Vegas.

6. On April 16, 2015, Respondent’s Office of Appeals in Las Vegas issued to Car Werks a Notice of Determination, sustaining the filing of the NFTL. \* \* \*

\* \* \*

12. \* \* \* [N]o Notice of Determination was issued to Mr. Palmer, individually, that would confer jurisdiction in this case.

On June 26, 2015, counsel for petitioner filed a Reply to respondent's Response. The Reply states that a Form 12153 ("Request For A Collection Due Process Or Equivalent Hearing") was filed with the IRS to protest an "[i]llegal lien filed to extort" David M. Palmer and that "[t]here is no question that David Palmer is seeking collection due process as an individual taxpayer." The Reply concludes with the following:

David Palmer is properly before this court as an individual taxpayer. The original caption of this case should be restored, and the Court's order for Carwerks to provide an Ownership Disclosure Statement should be vacated.

On July 21, 2015, respondent's filed a Sur-Reply to the aforementioned Reply. Respondent's Sur-Reply includes the following numbered paragraphs:

8. The filing of the NFTL [notice of Federal tax lien] perfected respondent's interest in Car Werks' property encumbered by the statutory lien. The filing of the September 15, 2014 NFTL did not affect property or interest in property not owned by Car Werks.

9. David Palmer is personally liable for trust fund recovery penalty ("TFRP") with respect to trust fund taxes that were collected but were not paid over by Car Werks for the taxable periods ending on June 30, 2014, March 31, 2014, and December 31, 2013.

10. While the statutory lien that arose as a result of David Palmer's failure to pay the TFRP after notice of demand attached to property and interest in property owned by David Palmer, respondent has not filed a Notice of Federal Tax Lien with respect to Mr. Palmer's unpaid TFRP liabilities.

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19. The caption in this case should only be changed if David Palmer, in his capacity as the sole member of Car Werks, intended the petition to be an appeal on behalf of Car Werks, and if Mr. Wallace was authorized to file a petition on behalf of Car Werks.

Most recently, by Order dated September 9, 2015, this case was assigned to the undersigned.

### Discussion

The Tax Court is a court of limited jurisdiction. See sec. 7442.<sup>2</sup> Accordingly, the Court may exercise jurisdiction only to the extent expressly authorized by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In addition, jurisdiction must be proven affirmatively, and a party invoking jurisdiction bears the burden of proving that the Court has jurisdiction over the party's case. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960); National Comm. to Secure Justice, Etc. v. Commissioner, 27 T.C. 837, 839 (1957). In order to meet this burden, the party must establish affirmatively all facts giving rise to jurisdiction. See Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, supra at 180; Consolidated Co. v. Commissioner, 15 B.T.A. 645, 651 (1929).

In a collection action, this Court's jurisdiction under sections 6320 and 6330 depends on (1) the issuance of a notice of determination by the IRS Office of Appeals after the taxpayer has requested an administrative hearing following the issuance by the IRS collection division of either a final notice of intent to levy, see sec. 6330(a), or a notice of filing of Federal tax lien, see sec. 6320(a); and (2) the filing of a timely petition for review. See Sarrell v. Commissioner, 117 T.C. 122, 125 (2001); Moorhous v. Commissioner, 116 T.C. 263, 269 (2001); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); see also Tax Court Rule 330(b). It is axiomatic that the petition must be filed by the taxpayer to whom the notice of determination was issued. Assuming that a petition is filed by the requisite taxpayer, it is clear that this Court's jurisdiction does not extend to awarding damages for "malicious lien filing" and that any remedy that may exist for "malicious lien filing" lies in another court. See, e.g., secs. 7432, 7433.

In the instant case the nub of the complaint consistently voiced by counsel who subscribed the petition is that it was David M. Palmer in his individual capacity who was injured by the filing of the lien and that it is David M. Palmer in his individual capacity who is the petitioner seeking redress. But respondent maintains that no lien was ever filed against David M. Palmer in his individual

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<sup>2</sup> Except as otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended.

capacity and that no notice of determination has been sent to him in his individual capacity. On the other hand, it is alleged in the petition that the IRS “filed a lien against Carwerks and taxpayer’s private property.” (Emphasis added.)

Complicating the matter further is the fact that the notice of Federal tax lien that was filed with the Secretary of State for the State of Montana in Helena, Montana was filed in the name of “Car Werks LLC, David Palmer, Sole MBR”, and reflects a “residence” address on Brooks Street in Missoula, MT. In contrast, the April 16, 2015 Notice Of Determination was issued simply to “Car Werks LLC” at a PO Box in Missoula, MT.<sup>3</sup> As the Court understands the Commissioner’s regulations, a single-member LLC (such as Car Werks LLC) is treated as a corporation under the “check-the-box” regulations for employment tax purposes for wages paid on or after September 14, 2009. See secs. 301.7701-2(c)(2)(iv), 301.7701-2(e)(5)(ii), Proced. & Admin. Regs. If this is true, then it is not clear why respondent would have identified David M. Palmer in the notice of Federal tax lien when respondent did not do so in the Notice Of Determination and whether the inclusion of Mr. Palmer’s name on the notice of Federal tax lien was improper.

Premises considered, and to further clarify the record in order to determine whether the Court has jurisdiction to proceed in this case on the merits, it is hereby

ORDERED that petitioner shall, on or before Friday, October 9, 2015, file a response to this Order and attach thereto (1) a copy of each and every notice of determination (other than the April 16, 2015 Notice Of Determination that is attached as an exhibit to the petition) that petitioner may have received, whether addressed to Car Werks LLC or to David M. Palmer in his individual capacity or otherwise, for employment tax or any other tax, for any taxable year or any taxable period within the timeframe “2012-2014” (as per the allegation in paragraph 1 of the petition); (2) a copy of each and every notice of Federal tax lien (other than the notice of Federal tax lien that is attached as an exhibit to respondent’s June 22, 2015 Response to the pending Motion To Change Or Correct Caption) of which petitioner is aware (and as alluded to in paragraph 4 of the petition) that may have been filed against either Car Werks LLC or David M. Palmer in an individual capacity or otherwise, for employment tax or any other tax, for any taxable year or

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<sup>3</sup> The ZIP Code for the PO Box does not match that for the street address. Further, it is not clear who “resides” at the specified street address and whether it is a business or a dwelling unit.

any taxable period within the timeframe “2012-2014” or that otherwise named David M. Palmer in any capacity whatsoever; (3) a copy of each and every final notice of intent to levy (within the meaning of section 6330(a)) that may have been received in respect of any outstanding liability owed by either Car Werks LLC or David M. Palmer in his individual capacity or any other capacity, for employment tax or any other tax, for any taxable year or any taxable period within the timeframe “2012-2014”; and (4) documents supporting petitioner’s assertion that property owned by David M. Palmer in his individual capacity is subject to a Federal tax lien. Finally, given the fact that the only relief expressly requested in the petition is \$350,000 for “malicious lien filing” and further given that this Court has no jurisdiction to award monetary damages in a collection action, petitioner shall state whether David M. Palmer, in his capacity as the sole member of Car Werks LLC, intended the petition in this case to be an appeal on behalf of Car Werks LLC, or whether David M. Palmer intended the petition to be an appeal solely on his own behalf (i.e., an appeal solely on his behalf in his individual capacity); and if the former, whether counsel Terry A. Wallace was authorized to file the petition on behalf of Car Werks LLC. It is further

ORDERED that respondent shall, on or before Friday, October 9, 2015, file a response to this Order and attach as exhibits to such response plain-English transcripts of account or other documentation sufficient to corroborate (1) that no notice of Federal tax lien has been filed against David M. Palmer in his individual capacity for employment tax or any other tax for any taxable year or any taxable period within the timeframe “2012-2014” (as per the allegation in paragraph 1 of the petition); (2) that no final notice of intent to levy (within the meaning of section 6330(a)) has been issued to David M. Palmer in his individual capacity for employment tax or any other tax for any taxable year or any taxable period within the timeframe “2012-2014”. Respondent shall also attach to his response to this Order a copy of each and every (1) notice of Federal tax lien and (2) notice of Federal tax lien filing and your right to a hearing under IRC 6320 upon which the April 16, 2015 Notice Of Determination that was issued to Car Werks LLC is based. In addition, respondent shall state in his response (1) whether, as of the date of this Order, any notice of determination has been issued to David M. Palmer in his individual capacity for employment tax or any other tax for any taxable year or any taxable period within the timeframe “2012-2014”; and (2) whether the notice of Federal tax lien that was filed in the name of “Car Werks LLC, David Palmer, Sole MBR” constitutes (in respondent’s view) a nominee lien and, if not, whether any nominee lien has been filed against David M. Palmer, whether in a representative or individual capacity, for employment tax or any other tax for any taxable year or any taxable period within the timeframe “2012-2014”. Further,

respondent shall state in his response whether (in respondent's view) naming David M. Palmer on the notice of Federal tax lien and filing the notice of Federal tax lien in the name of "Car Werks LLC, David Palmer, Sole MBR" was consistent with the regulations cited in the preamble to this Order and, regardless, whether such notice of Federal tax lien appropriately named "David Palmer, Sole MBR" if the taxpayer against whom the lien was filed was Car Werks LLC; and if (in respondent's view) the inclusion of Mr. Palmer's name on the notice of Federal tax lien was appropriate, why it was so if the assessment giving rise to the lien was made against Car Werks LLC. Finally, respondent shall explain in his response the "residence" address reference in such notice of Federal tax lien.

The parties are advised that action on the May 29, 2015 Motion To Change Or Correct Caption is held in abeyance pending the parties' responses to this Order.

The parties are further advised that if the Court were to conclude that it has jurisdiction to proceed in this case on the merits, then the Court shall sua sponte strike from the petition the last sentence of paragraph 4 of the petition ("Taxpayer seeks \$350,000 in damages from IRS for malicious lien filing.") as this Court lacks jurisdiction to award monetary damages in a collection action.

**(Signed) Robert N. Armen, Jr.  
Special Trial Judge**

Dated: Washington, D.C.  
September 11, 2015