

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)	
)	
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)	

ORDER AND ORDER TO SHOW CAUSE

Reference is made to the Court’s Order dated September 11, 2015. As directed by that Order, respondent filed a Response on October 7, 2015, and petitioner filed a Response on October 26, 2015.

Respondent’s aforementioned Response demonstrates that the original notice of Federal tax lien in question has been refiled by respondent to reflect “Car Werks LLC” as the taxpayer rather than “Car Werks LLC, David Palmer Sole MBR”. Further, the parties’ Responses demonstrate that only a single notice of determination has been issued, to date, and that such notice is dated April 16, 2015, and is addressed to Car Werks LLC in respect of its outstanding employment taxes for 4Q2013 and 1Q2014. The parties’ Responses also demonstrate that the April 16, 2015 Notice Of Determination sustained a notice of Federal tax lien that had been filed against Car Werks LLC and not against David M. Palmer. Finally, as immediately relevant, the parties’ Responses demonstrate that although assessments have been made against David M. Palmer for trust fund recovery penalties under I.R.C. section 6672 in respect of outstanding employment taxes for Car Werks LLC for quarters that include 4Q2013 and 1Q2014, respondent has not to date filed any notice of Federal tax lien against David M. Palmer and that, a

fortiori, respondent would have had no reason to issue -- and has not issued-- any notice of determination to such individual in respect of those penalties.

As stated in the September 11, 2015 Order, this Court's jurisdiction in a collection review action (see I.R.C. section 6330(d)(1)) depends, in part, on the issuance of a notice of determination by respondent's Office of Appeals after the taxpayer has requested an administrative hearing following the issuance by respondent's 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). 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 Rule 330(b), Tax Court Rules of Practice and Procedure.¹

Further, as discussed at length in the Court's Order dated September 11, 2015, the instant case resembles more a case commenced and prosecuted by David M. Palmer than it does a case commenced and prosecuted by Car Werks LLC. Under the circumstances present here and as discussed, the Court lacks jurisdiction over David M. Palmer. Likewise, and as the parties were advised in the September 11, 2015 Order, the Court's jurisdiction does not extend to awarding damages for "malicious lien filing" and that any remedy for damages that may exist for "malicious lien filing" lies in another court. See, e.g., I.R.C. secs. 7432, 7433.

Premises considered, and incorporating herein the preamble to the Court's September 11, 2015 Order, it is hereby

¹ In this regard we repeat what was said in the September 11, 2015 Order: The Tax Court is a court of limited jurisdiction. See I.R.C. sec. 7442. 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 the Court's 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 the Court's jurisdiction. See Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, supra at 180; Consolidated Co. v. Commissioner, 15 B.T.A. 645, 651 (1929).

ORDERED that petitioner's Motion To Change Or Correct Caption, filed May 29, 2015, is denied. It is further

ORDERED that the Court's May 15, 2015 Order (amending the caption of this case to read as it appears above in the caption of this Order And Order To Show Cause) is amended in that the caption of this case shall now and henceforth read, "CAR WERKS LLC, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent". It is further

ORDERED that, on the Court's own motion, this case is dismissed for lack of jurisdiction as to David M. Palmer. It is further

ORDERED that, on the Court's own motion, the final sentence of paragraph 4 of the petition (which sentence reads, "Taxpayer seeks \$350,000 in damages from IRS for malicious lien filing.") is deemed to be stricken therefrom. It is further

ORDERED that Car Werks LLC and respondent shall, on or before November 13, 2015, show cause in writing why this case should not be dismissed for lack of jurisdiction based on the lack of a proper party. Car Werks LLC may show cause by filing on or before November 13, 2015, an amendment to petition ratifying the petition filed May 11, 2015 (subject to the preceding ORDERED paragraph striking a portion thereof), but any such amendment must be executed by the sole member of Car Werks LLC himself and **not** by counsel.

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If Car Werks LLC were to file an amendment to petition as described in the preceding ORDERED paragraph, then this Court would most likely, by subsequent Order, require (1) counsel seeking to represent Car Werks LLC to file an entry of appearance for Car Werks LLC if counsel wished to represent Car Werks LLC in the instant action; (2) Car Werks LLC (acting on its own behalf or through counsel if the requisite entry of appearance were to be filed) to file an amended petition that is responsive to the April 16, 2015 Notice Of Determination that was issued to Car Werks LLC (but not to assert any claim for damages for “malicious lien filing”); and (3) Car Werks LLC to comply with the Court’s May 15, 2015 Order For Ownership Disclosure Statement.

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

Dated: Washington, D.C.
October 30, 2015