

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LANE ALAN MONTZ,)	
)	
Petitioner,)	CZ
)	
v.)	Docket No. 23537-15S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	
)	
)	
)	

ORDER

This case for the redetermination of a deficiency and an accuracy-related penalty is before the Court on petitioner’s Motion To Determine Jurisdiction, filed June 1, 2016. According to petitioner’s motion, the \$3,500 remittance made by petitioner before the notice of deficiency was issued was intended to be a deposit and not a payment. Petitioner attached to the motion a copy of the letter that accompanied the remittance, which states,

[i]n order to stop interest, ameliorate any penalties and show good faith, I am enclosing a check for \$3,500.00. This does not mean I am agreeing or will agree to any deficiency assessment but rather is to stop interest, etc. while we sort this out.

On July 5, 2016, respondent filed a Response To Motion To Determine Jurisdiction. Respondent contends that petitioner’s remittance should be treated as a payment instead of a deposit because petitioner failed to follow the procedures provided in Rev. Proc. 2005-18, 2005-1 C.B. 798, to properly designate the remittance as a deposit. Accordingly, respondent contends that the Court lacks jurisdiction. On July 5, 2016, petitioner filed a Response to respondent’s Response.

On August 15, 2016, respondent filed a First Supplement To Response To Motion To Determine Jurisdiction. Thereafter, on August 18, 2016, petitioner filed a Response to respondent's First Supplement.

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. Rule 13(a), Tax Court Rules of Practice and Procedure; Frieling v. Commissioner, 81 T.C. 42, 46 (1983).¹ However, if a deficiency is paid in full by the taxpayer before a notice of deficiency is issued, this Court and others have held that there is no deficiency, such that the notice of deficiency is invalid and the Tax Court lacks jurisdiction. See Bendheim v. Commissioner, 214 F.2d 26 (2d Cir. 1954); McConkey v. Commissioner, 199 F.2d 892 (4th Cir. 1952); Estate of Crawford v. Commissioner, 46 T.C. 262 (1966); Walsh v. Commissioner, 21 T.C.1063 (1954); Anderson v. Commissioner, 11 T.C. 841 (1948); see also Grubart v. Commissioner, T.C. Memo. 1981-101, aff'd without published opinion, 685 F.2d 424 (2d Cir. 1982).

The principal question that the Court must answer in deciding whether jurisdiction is present in the instant case is whether petitioner's remittance to respondent was a payment or a deposit. See Bedrosian v. Commissioner, T.C. Memo. 2007-376; aff'd, 358 Fed. Appx. 868 (9th Cir. 2009). If petitioner's remittance was a payment, then the Court would appear to lack jurisdiction for want of a valid notice of deficiency. If petitioner's remittance was a deposit, then the Court would appear to have jurisdiction.

Section 6603(a) of the Internal Revenue Code provides:

A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax * * * which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

¹ Jurisdiction in an action for redetermination also depends on a timely-filed petition. However, in the instant case it is clear that petitioner filed the petition within the requisite 90-day period, and respondent does not argue otherwise but, challenges only the validity of the notice of deficiency as discussed above in the text.

Rev. Proc. 2005-18, 2005-1 C.B. 798, provides guidance in determining whether a remittance is considered a payment or a deposit. According to Rev. Proc. 2005-18, sec. 4.01(1), 2005-1 C.B. at 799, the taxpayer may make a deposit by remitting to the IRS a check or money order, accompanied by a written statement designating the remittance as a deposit. However, if the remittance is undesignated, i.e., is not designated as a deposit, other facts and circumstances help determine whether it is a payment or a deposit. Rev. Proc. 2005-18, secs. 4.01(2), 4.03, 4.04, 2005-1 C.B. at 799-800.

We are satisfied that the manner in which the remittance was submitted to respondent demonstrates petitioner's intent that the remittance was intended to be a deposit, as he put it, "to stop interest, ameliorate any penalties and show good faith". Furthermore, petitioner expressly and unambiguously stated that the remittance "does not mean I am agreeing or will agree to any deficiency assessment."

Because we find that the remittance was a deposit and not a payment, it is

ORDERED in that petitioner's Motion To Determine Jurisdiction, filed June 1, 2016, is granted in that the August 19, 2015 notice of deficiency, upon which this case is based, is valid, such that this Court has jurisdiction to proceed. It is further

ORDERED that, this case being at issue, see Rule 38, Tax Court Rules of Practice and Procedure, the Clerk of the Court shall calendar this case for trial at the next available session for small tax cases at Cleveland, Ohio, the place of trial requested by petitioner.

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

Dated: Washington, D.C.
October 5, 2016