

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

JOYCE G. SPRINGFIELD,)
)
Petitioner,)
)
v.) Docket No. 8172-16 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On May 20, 2016, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground that the petition was not timely filed. Respondent attached to the motion a copy of the certified mail list as evidence of the fact that the notice of determination for tax year 2011 was sent to petitioner at her last known address by certified mail on February 5, 2016.

The petition was filed with the Court on April 7, 2016, which date is 62 days after the notice of determination for tax year 2011 was mailed to petitioner. The envelope in which the petition was mailed to the Court bears a U.S. Postal Service postmark of April 6, 2016, which date is 61 days after the mailing of the notice of determination.

This Court's jurisdiction to review certain collection activity of the Internal Revenue Service depends on (1) the issuance of a valid notice of determination by an Internal Revenue Service Appeals Officer under I.R.C. section 6320 or 6330 and (2) the timely filing by the taxpayer of a petition generally within 30 days of that Appeals Office determination. Smith v. Commissioner, 124 T.C. 36, 38-39 (2005); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); I.R.C. sec. 6320(c) and 6330(d)(1); Rule 330(b), Tax Court Rules of Practice and Procedure. The Court has no authority to extend this 30-day period. Weber v. Commissioner, 122 T.C. 258, 263 (2004); McCune v. Commissioner, 115 T.C. 114, 117-118 (2000).

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The procedures authorized by I.R.C. section 6212(a) and (b) for sending a notice of deficiency apply to the mailing of a notice of determination issued pursuant to I.R.C. section 6320 or 6330. Weber v. Commissioner, 122 T.C. at 261-262; Balice v. Commissioner, T.C. Memo. 2005-35. A notice of determination issued in a collection due process case that is mailed in accordance with section 6212(a) and (b) is sufficient to start the 30-day period within which a taxpayer may appeal the determination to the Tax Court under section 6330(d). Weber v. Commissioner, 122 T.C. at 261-262; Balice v. Commissioner, T.C. Memo. 2005-35. Actual receipt of a notice of determination by a taxpayer is unnecessary to commence the 30-day period for petitioning the Court provided that the notice was sent by certified mail to the taxpayer's last known address. Weber v. Commissioner, 122 T.C. at 263.

The 30-day period to timely file a petition in this case expired on March 7, 2016. However, the petition was not filed within that period.

On June 21, 2016, petitioner filed a Letter Dated June 17, 2016, stating that her family was forced to move when their family dog bit the manager of their apartment building in November 2015. She states that she changed her address with the United States Post Office (USPS) when she found a new home close to her prior address. On August 10, 2016, petitioner filed a response to respondent's motion to dismiss, again stating that she changed her address with the USPS. Petitioner stated in the petition that she moved to her new residence and changed her address with the USPS on February 1, 2016, four days before respondent mailed the notice of determination.

Generally, a taxpayer's last known address is the address appearing on the taxpayer's most recently filed tax return, unless the taxpayer gives the IRS clear and concise notice of a change of address. Sec. 301.6212-2(a), *Proced. & Admin. Regs.* Generally, change of address information that a taxpayer provides to a third party, such as a payor or another government agency, is not clear and concise notification of a different address for purposes of determining the taxpayer's last known address. Sec. 301.6212-2(b)(1), *Proced. & Admin. Regs.* However, section 301.6212-2(b)(2)(i), *Proced. & Admin. Regs.* provides that the IRS will update taxpayer addresses maintained in IRS records by referring to data accumulated and maintained by the USPS National Change of Address database (NCOA database). If the address maintained in IRS records is updated based on information obtained from the NCOA database, that address will be the taxpayer's last known address until the taxpayer files a return with a different address or the taxpayer provides the IRS with clear and concise notice of a change of address. Sec. 301.6212-

2(b)(2)(ii), Proced. & Admin. Regs. However, the taxpayer must inform the USPS of the change of address in sufficient time for the IRS to process and post the new address to the IRS records by the date the notice is mailed. In section 301.6212-2(b)(3) Example (2), Proced. & Admin. Regs., the taxpayer changed his address with the USPS six days before the notice was mailed. In the Example, the taxpayer's last known address was the address on his most recently filed tax return because the taxpayer did not inform the USPS of his change of address in sufficient time for the IRS to process and post the new address before the notice was mailed. Id.; see also Graham v. Commissioner, T.C. Memo. 2008-129. Similarly, the four days between petitioner's notification to the USPS of her change of address and issuance of the notice in this case was not sufficient time for the IRS to process and post the new address before the notice of determination was mailed to her. Accordingly, the notice of determination was mailed to petitioner's last known address.

While the Court is sympathetic to petitioner's situation, the Court has no authority to extend the period provided by law for filing a petition "whatever the equities of a particular case may be and regardless of the cause for its not being filed within the required period." Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, since the petition was not filed within the required 30 day period, this case must be dismissed for lack of jurisdiction.

Upon due consideration, it is

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction is granted, and this case is dismissed for lack of jurisdiction.

(Signed) L. Paige Marvel
Chief Judge

ENTERED: **OCT 28 2016**