

UNITED STATES TAX COURT
WASHINGTON, DC 20217

NATHANAEL L. KENAN,)	
)	
Petitioner,)	CZ
)	
v.)	Docket No. 22293-16.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is before the Court on respondent’s motion to dismiss for lack of jurisdiction on the ground of an untimely petition. We will deny the motion, and the case will proceed to trial.

Background

This case involves the 2011 income tax liability of petitioner Nathanael L. Kenan for 2011. Mr. Kenan filed a return for that year on which he claimed a son as a dependent and claimed related child tax credit and earned income credit. The return bore an address on Ivanhoe Lane in Southfield, Michigan.

Mr. Kenan alleges that sometime before February 2013 he moved from the Ivanhoe Lane address to a new address Franklin Hills Drive in Southfield. He alleges that he advised the U.S. Postal Service of his new address and that the USPS thereafter forwarded to the Franklin Hills Drive address his mail addressed to the Ivanhoe Lane address.

The IRS shows, by its Form 3877, that the IRS mailed an SNOD to the Ivanhoe Lane address on February 19, 2013. The SNOD disallowed the claimed dependent exemption and related credits.

Mr. Kenan filed his 2012 Federal income tax return in April 2013, claiming an overpayment of tax, and on it he gave the new Franklin Hills Drive address. He

does not allege that he ever gave the IRS notice of a change of address between the April 2012 filing of his 2011 return and the April 2013 filing of his 2012 return.

Because Mr. Kenan did not file a Tax Court petition within 90 days after the date on the 2011 SNOD, the IRS evidently assessed the tax deficiency determined in the SNOD. Mr. Kenan alleges that at some point (which he does not specify) the IRS began collection activity, garnished his wages, levied against his bank account, and withheld the refund of the 2012 overpayment and applied it instead to 2011. This activity prompted Mr. Kenan to contact the National Taxpayer Advocate.

Mr. Kenan filed a Tax Court petition (on the advice of the NTA, he alleges) on October 14, 2016. The petition alleges that he never received a statutory notice of deficiency (“SNOD”) from the IRS for 2011. He contends that he had moved to the Franklin Hills Drive address by the time the SNOD was issued and that no 2011 SNOD was ever forwarded to him by the USPS. He argues that this is evidence that the SNOD was in fact never actually mailed.

Discussion

If the IRS duly mailed an SNOD to Mr. Kenan, then he was required to file his petition within 90 days, see sec. 6213(a). We would then have to dismiss his late petition for lack of jurisdiction on that untimeliness ground, and the IRS’s assessment of tax would stand (unless and until it were later effectively challenged in a refund suit or a collection due process suit). However, if the SNOD was not properly issued, then we would have to dismiss this case on that different ground, and the consequence would be that the tax assessment is invalid.

An SNOD must be sent to the taxpayer’s “last known address”. If it is not, then the SNOD is invalid. The IRS shows that they mailed an SNOD to the last address that had appeared on a tax return filed by Mr. Kenan, but the IRS does not make any showing of its compliance with, or the effect of, 26 C.F.R. sec. 301.6212-2(b)(2)(i), which provides:

The IRS will update taxpayer addresses maintained in IRS records by referring to data accumulated and maintained in the United States Postal Service (USPS) National Change of Address database that retains change of address information for thirty-six months (NCOA database). Except as provided in paragraph (b)(2)(ii) of this section, if the taxpayer's name and last known address in IRS records match the taxpayer's name and old

mailing address contained in the NCOA database, the new address in the NCOA database is the taxpayer's last known address, unless the IRS is given clear and concise notification of a different address.

We will therefore deny the IRS's motion and proceed to trial. However, Mr. Kenan is advised that at trial he will have the burden of proving all the facts he relies on, including the date of his change of address and the date and manner of his giving notice to the USPS of his change of address.

(Mr. Kenan alleges collection activity by the IRS; and if he received from the IRS a lien or levy notice (titled "Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code") for which his Tax Court petition would have been a timely challenge, he should promptly disclose that notice to his opponent and should file a motion to amend his petition to seek review of the notice of determination.)

It is

ORDERED that respondent's motion to dismiss is denied.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
August 11, 2017