

UNITED STATES TAX COURT
WASHINGTON, DC 20217

GEORGE J. FOXX,)
)
Petitioner,)
)
v.) Docket No. 14404-17.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

SD

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

Petitioner filed the petition to commence this case on June 30, 2017, indicating that he seeks review of a purported notice of final determination not to abate interest with respect to his 2010, 2011, and 2012 tax years. Among other things, attached to the petition is (1) the first page of a Letter 1342, dated May 31, 2017, informing petitioner that his appeal of tax preparer penalties pursuant to Internal Revenue Code (I.R.C.) section 6694(b) imposed against him for 2010, 2011, and 2012 was being denied, and (2) a letter from the IRS, dated June 20, 2017, informing petitioner that documentation he submitted was being returned to him as his case had already been closed out of Appeals. On August 9, 2017, respondent filed in this case a Motion To Dismiss for Lack of Jurisdiction on the ground that no notice of deficiency or notice of determination as to tax years 2010, 2011, and 2012 has been issued to petitioner that would permit him to invoke the jurisdiction of this Court. On August 18, 2017, petitioner filed a Notice of Objection to respondent's motion to dismiss.

This Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In addition, jurisdiction must be proven affirmatively, and a taxpayer invoking our jurisdiction bears the burden of proving that we have jurisdiction over the taxpayer'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).

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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 to the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Frieling v. Commissioner, 81 T.C. 42, 46 (1983). The notice of deficiency has been described as "the taxpayer's ticket to the Tax Court" because without it, there can be no prepayment judicial review by this Court of the deficiency determined by the Commissioner. Mulvania v. Commissioner, 81 T.C. 65, 67 (1983).

Similarly, this Court's jurisdiction in a case seeking review of a determination concerning collection action depends, in part, upon the issuance of a valid notice of determination by the IRS Office of Appeals under I.R.C. section 6320 or 6330, I.R.C. secs. 6320(c) and 6330(d)(1), I.R.C.; Rule 330(b), Tax Court Rules of Practice and Procedure; Offiler v. Commissioner, 114 T.C. 492 (2000). An essential prerequisite to the issuance of a notice of determination is the requirement that a taxpayer have requested a hearing before the IRS Office of Appeals within the 30-day period specified in section 6320(a) or 6330(a), I.R.C., and calculated with reference to an underlying Notice of Federal Tax Lien Filing, Notice of Intent To Levy, or analogous post-levy notice of hearing rights under section 6330(f), I.R.C. (e.g., a Notice of Levy on Your State Tax Refund and Notice of Your Right to a Hearing).

Other types of IRS notices which may form the basis for a petition to the Tax Court, likewise under statutorily prescribed parameters, are a Notice of Determination Concerning Your Request for Relief From Joint and Several Liability, a Notice of Final Determination Not To Abate Interest, and a Determination of Worker Classification. Although petitioner indicated in his petition that he seeks review of a notice of final determination not to abate interest, he states in his objection to respondent's motion to dismiss that this case "has nothing to do with interest abatement". Accordingly, no pertinent claims involving I.R.C. section 6015, 6404(h), or 7436, respectively, appear to be involved in this case.

In his objection, petitioner argues that he is being denied due process and that this Court has jurisdiction to review the "final determination proffered to Petitioner to just pay a fine". Petitioner's statement appears to be a reference to the Letter 1342 that petitioner received from the IRS Appeals Office sustaining the imposition against him of tax preparer penalties pursuant to I.R.C. 6694(b). However, petitioner's belief that this Court has jurisdiction to review that decision by the IRS is mistaken. I.R.C. 6696(b) specifically provides that deficiency

procedures do not apply to the assessment or collection of the penalties set forth in I.R.C. section 6694, 6695, and 6695A. Nor is the Letter 1342 that petitioner received one of the types of notice of determination (described above) that is sufficient to confer jurisdiction on this Court.

Petitioner has not produced or otherwise demonstrated that he has been issued any notice of deficiency or notice of determination that would permit him to invoke the jurisdiction of this Court. Accordingly, 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, filed August 9, 2017, is granted and this case is dismissed for lack of jurisdiction.

**(Signed) L. Paige Marvel
Chief Judge**

ENTERED: **SEP 26 2017**