

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

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

ORDER

Pursuant to Rule 152(b) of the Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the hearing in the above case before the undersigned judge at Detroit, Michigan, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, an appropriate order will be issued dismissing this case for lack of jurisdiction on the ground that the petition in this case was filed untimely.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
October 5, 2017

1 Bench Opinion by Judge David Gustafson
2 September 19, 2017
3 Nathanael L. Kenan v. Commissioner;
4 Docket No. 22293-16

5 THE COURT: The Court has decided to render the
6 following as its oral Findings of Fact and Opinion in this
7 case. This Bench Opinion is made pursuant to the
8 authority granted by section 7459(b) of the Internal
9 Revenue Code (26 U.S.C.), and Tax Court Rule 152; and it
10 shall not be relied on as precedent in any other case.

11 This is a deficiency case brought by petitioner
12 Nathanael L. Kenan pursuant to 26 U.S.C. section 6213, and
13 it is founded on a statutory notice of deficiency ("SNOD")
14 for the year 2011 dated February 19, 2013. The
15 Commissioner contends that this case (filed more than
16 three years later on October 14, 2016) was untimely, and
17 he moved to dismiss the petition on that ground; but Mr.
18 Kenan opposed, contending that the SNOD was not mailed to
19 his last know[^] address ("LKA"). In view of this factual Dg
20 dispute, we denied Commissioner's motion and ordered that
21 this jurisdictional issue would be heard in Detroit,
22 Michigan, on September 18, 2017. Mr. Kenan represented
23 himself, and Charles Dumas represented the Commissioner.

24 We hold that Mr. Kenan did not prove that the
25 SNOD was not sent to his LKA, and we therefore dismiss the

1 case in favor of the Commissioner on the grounds that the
2 petition was filed untimely.

3 FINDINGS OF FACT

4 Because of Mr. Kenan's noncooperation, the
5 parties did not present a stipulation of facts as required
6 by Rule 91(a). The Commissioner's counsel proposed that
7 the Court could take notice of the undisputed facts in the
8 parties' briefing of the Commissioner's motion to dismiss
9 (ECF Nos. 8, 10, 13), and Mr. Kenan did not object. The
10 agreed facts were previously set out in our order of
11 August 11, 2017 (ECF No. 15), and were supplemented by
12 testimony at the ~~trial~~ hearing. DC

13 The Ivanhoe Lane Address on the 2010 and 2011 Returns

14 In about April 2011, Mr. Kenan filed with the
15 IRS a Federal tax return for 2010, on which he reported
16 his address on Ivanhoe Lane in Southfield, Michigan, where
17 he resided. In about April 2012, he filed with the IRS a
18 tax return for 2011 and again reported on it the Ivanhoe
19 Lane address.

20 Mr. Kenan's Move and Change of Address

21 In June 2012, Mr. Kenan moved from his residence
22 on Ivanhoe Lane to a different residence on Franklin Hills
23 Drive in Southfield. Sometime thereafter he submitted to
24 the U.S. Postal Service a change of address form; but
25 employing the burden-of-proof principles discussed below,

1 we are unable to find when he submitted it or exactly what
2 information he reported on it as to his precise name and
3 address.

4 IRS Exam and SNOD

5 Sometime after Mr. Kenan filed his 2011 return
6 in about April 2012, the IRS examined that return. On it,
7 Mr. Kenan had claimed a son as a dependent and had claimed
8 related child tax credit and earned income credit. The
9 IRS determined ^{to} disallow the claimed dependent exemption DG
10 and related credits, and it mailed to Mr. Kenan an SNOD
11 determining the resulting tax deficiency. The
12 Commissioner shows, by Form 3877 (ECF Doc. 8, Ex. B), that
13 on February 19, 2013, the IRS mailed the SNOD by certified
14 mail to the Ivanhoe Lane address.

15 Mr. Kenan did not receive the SNOD. When he did
16 not, within 90 days of the issuance of the SNOD, file a
17 petition in the Tax Court, the IRS assessed the deficiency
18 of tax.

19 The Franklin Hills Drive Address on the 2012 Return

20 Mr. Kenan filed his 2012 Federal income tax
21 return in about April 2013, after the IRS had mailed the
22 2011 SNOD to the Ivanhoe Lane address, and on it he gave
23 his new Franklin Hills Drive address. This was the first
24 time that he gave notice of his change of address directly
25 to the IRS. The 2012 return claimed an overpayment of

1 tax.

2 Tax Court Proceedings

3 When the IRS did not refund that 2012
4 overpayment, but instead applied it toward the 2011
5 deficiency (as well as garnishing his wages and levying
6 against his bank account), Mr. Kenan contacted the
7 National Taxpayer Advocate and learned of the 2011 SNOD
8 that he had not received. Mr. Kenan filed a Tax Court
9 petition on October 14, 2016, asserting that he never
10 received the 2011 SNOD. Mr. Kenan later clarified in his
11 July 24, 2017, response to the Commissioner's motion to
12 dismiss that he had moved to the Franklin Hills Drive
13 address by the time the SNOD was issued, completed an
14 "address change form" every time he moved, and that no
15 2011 SNOD was ever forwarded to him by the USPS. (ECF 10,
16 paragraphs 4 and 6).

17 The Commissioner filed a motion to dismiss the
18 petition as untimely, but in view of the LKA dispute, we
19 denied the Commissioner's motion and ordered an
20 evidentiary hearing. (Our order stated that the case
21 would proceed "to trial", but since both parties dispute
22 our jurisdiction (though for different reasons), a trial
23 of the merits of Mr. Kenan's 2011 liability could not
24 happen in this case, and the proceeding was in the nature
25 of an evidentiary hearing as to jurisdiction.)

OPINION

1
2 If the IRS duly mailed an SNOD to Mr. Kenan,
3 then he was required to file his petition within 90 days,
4 see section 6213(a). We would then have to dismiss his
5 late petition for lack of jurisdiction on that
6 untimeliness ground, and the IRS's assessment of tax would
7 stand (unless and until it were later effectively
8 challenged in a refund suit or a collection due process
9 suit). However, an SNOD must be sent to the taxpayer's
10 "last-known-address"; and if it is not, then the SNOD is
11 invalid. See section 6212. If the SNOD was not properly
12 issued, then we would have to dismiss this case on that
13 different ground, and the consequence would be that the
14 tax assessment is invalid and must be abated.

15 As petitioner, Mr. Kenan bears the burden of
16 proof. See Rule 142(a)(1). The IRS shows that they
17 mailed an SNOD to the last address that had appeared on a
18 tax return filed by Mr. Kenan. His only attempt to show
19 nonmailing was his testimony of nonreceipt (which we
20 accept); but all his testimony shows is that he did not
21 receive the SNOD at the Franklin Hills Drive address,
22 whereas the Commissioner shows that the IRS mailed the
23 SNOD to the Ivanhoe Lane address, so Mr. Kenan's
24 nonreceipt at Franklin Hill's Drive does not show
25 nonmailing to Ivanhoe Lane.

1 The dispute here is whether Ivanhoe Lane was
2 still Mr. Kenan's "last-known-address" in February 2013,
3 even though by then he had actually moved to Franklin
4 Hill's Drive. As of February 2013, the Ivanhoe Lane
5 address was the last address that Mr. Kenan had reported
6 to the IRS on a return; but in the Commissioner's motion
7 to dismiss that we denied, the Commissioner did not make
8 any showing of the IRS's compliance with, or the effect
9 of, 26 C.F.R. section 301.6212-2(b)(2)(i), which provides:

10 "The IRS will update taxpayer addresses
11 maintained in IRS records by referring to data
12 accumulated and maintained in the United States
13 Postal Service (USPS) National Change of Address
14 database that retains change of address
15 information for 36 months (NCOA database).
16 Except as provided in paragraph (b)(2)(ii) of
17 this section, if the taxpayer's name and
18 last-known-address in IRS records match the
19 taxpayer's name and old mailing address
20 contained in the NCOA database, the new address
21 in the NCOA database is the taxpayer's
22 last-known-address, unless the IRS is given
23 clear and concise notification of a different
24 address."

25 Mr. Kenan's change of address with the U.S. Postal Service

1 was the issue set for hearing; and our order of August 11,
2 2017, ~~dated~~ st dated: "...Mr. Kenan is advised that at the trial, DC-
3 he will have the burden of proving all the facts he relies
4 on, including the date of his change of address and the
5 date and manner of his giving notice to the USPS of his
6 change of address".

7 At the hearing, however, Mr. Kenan did not give
8 evidence sufficient to let us find either when he
9 submitted his form to the USPS nor exactly what he put on
10 it. He offered only his testimony, and no documents, not
11 a copy of the change of address form he submitted, nor a
12 copy of the confirming letters ^g that the USPS would have DC-
13 sent him, nor any piece of mail showing a forwarding by
14 the USPS before or during the relevant time period.
15 Moreover, his testimony on the subject was very general.
16 He did not profess to know the date he had submitted the
17 form to the USPS, and he did not even attempt much of an
18 approximation, only that he submitted it after he moved in
19 June 2012 and before the IRS issued the SNOD in February
20 2013.

21 In the absence of any document reflecting what
22 Mr. Kenan submitted to the USPS, we are also unable to
23 find whether, in the words of the regulation, "the
24 taxpayer's name and last known address in IRS records
25 match the taxpayer's name and old mailing address

1 contained in the NCOA database". Before assuming that a
2 new address in the USPS database is really the address of
3 a taxpayer, the IRS must be able to correlate that new
4 address to the old address and the taxpayer. Any
5 difference in the IRS's record of the taxpayer's name and
6 old address, on the one hand, and the USPS's data of an
7 individual and his new address, on the other, would be a
8 reason not to use the USPS address as an LKA for a
9 taxpayer. Without any documentation of Mr. Kenan's notice
10 to the USPS, we cannot know whether his name and old
11 address as he rendered them on it might have differed from
12 his LKA maintained in the IRS records, by something like
13 the presence or absence of a middle name, the use of
14 initials or a nickname, or an abbreviation or misspelling
15 of a street name or city name. We are unable to find
16 precisely what he submitted to the USPS or when. We
17 therefore cannot say that he has proved that the Ivanhoe
18 Lane address was not his last-known-address for purposes
19 of mailing the SNOD.

20 We will therefore dismiss this case for lack of
21 jurisdiction on the ground that it was filed untimely.

22 This concludes the Court's oral Findings of Fact
23 and Opinion in this case.

24 (Whereupon, at 1:23 a.m./p.m., the
25 above-entitled matter was concluded.)