

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

FLETCHER HYLER,)
)
Petitioner,) **CT**
)
v.) Docket No. 9417-17.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This case was called from the trial calendar of the Court in San Francisco, California, on January 30, 2018, for hearing on respondent’s motion to dismiss for lack of jurisdiction, filed June 14, 2017, and petitioner’s motion to restrain assessment or collection, filed July 25, 2017.¹ No appearance was entered by or on behalf of petitioner. Victoria Z. Gu appeared on behalf of respondent. As explained below, the Court will grant respondent’s motion to dismiss and deny petitioner’s motion to restrain.

Background

On May 1, 2017, petitioner filed a petition with the Court and attached thereto a mathematical error notice for the taxable year 2015. In subsequent filings with the Court, petitioner suggested that the years in dispute include the taxable years 2009 and 2010--attaching various collection notices concerning those years to documents that he has filed with the Court.

On March 12, 2018, following the hearing of this matter and as directed by the Court, respondent filed a status report informing the Court and petitioner that on March 6, 2018, the Office of Appeals issued to petitioner a final notice of determination sustaining a Federal tax lien filed against him for the taxable years 2009 and 2010. As explained in that notice of determination, petitioner will have

¹Section references are to sections of the Internal Revenue Code, as amended. Rule references are to the Tax Court Rules of Practice and Procedure.

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30 days from the date of that notice of determination to file a petition for review of the lien action with the Tax Court. See secs. 6320, 6330.

On March 16, 2018, respondent filed a first supplement to respondent's motion to dismiss for lack of jurisdiction, supported by two declarations. Respondent maintains that the petition filed in this case on May 1, 2017, was ineffective to invoke the Court's jurisdiction for the taxable years 2009, 2010, and 2015.

A. 2015

Respondent informed the Court that he will treat the petition filed in this case on May 1, 2017, as a timely request for abatement in respect of the mathematical error notice for 2015, dated April 10, 2017, attached to the petition. Consequently, consistent with the provisions of section 6213(b)(2)(A), respondent will abate all assessments related to that notice and any reassessment shall be subject to the deficiency procedures prescribed in that section. The record otherwise reflects that, as of May 1, 2017, respondent had not issued to petitioner any notice of deficiency or notice of determination that would permit him to invoke the Court's jurisdiction for the taxable year 2015.

B. 2009 and 2010

The record reflects that petitioner's Federal income tax liabilities for the taxable years 2009 and 2010 were previously redetermined by the Court in deficiency cases that he had filed at docket Nos. 10208-12S and 11078-13S, respectively. The decisions entered by the Court in those cases are now long-since final. Sec. 7481.

Respondent subsequently sent notices of intent to levy to petitioner in respect of the amounts due for 2009 and 2010, and he submitted to respondent timely requests for an administrative hearing under section 6330. On November 10, 2015, and January 18, 2017, respondent issued to petitioner notices of determination sustaining the proposed levy actions for the taxable years 2009 and 2010, respectively. There is no record of petitioner having filed with the Court a petition for review of the notices of determination sustaining proposed levy actions.

Discussion

The Tax Court is a court of limited jurisdiction, and we may exercise our jurisdiction only to the extent authorized by Congress. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). The Court's jurisdiction to redetermine a deficiency depends upon the issuance of a valid notice of deficiency and a timely-filed petition. Rule 13(a), (c); Monge v. Commissioner, 93 T.C. 22, 27 (1989); Normac, Inc. v. Commissioner, 90 T.C. 142, 147 (1988). Similarly, the Court's jurisdiction under sections 6320 and 6330 depends upon the issuance of a notice of determination and the filing of a timely petition for review. See Sarrell v. Commissioner, 117 T.C. 122, 125 (2001); Offiler v. Commissioner, 114 T.C. 492, 498 (2000). Where respondent issues a notice of determination to a person following an administrative hearing regarding a lien or levy action, sections 6320(c) (by way of cross-reference) and 6330(d)(1) provide that the person will have 30 days following the issuance of such notice of determination to file a petition for review with the Tax Court. Offiler v. Commissioner, 114 T.C. at 498.

As discussed above, the Court previously redetermined petitioner's income tax deficiencies for 2009 and 2010, and the decisions in those cases are long-since final. Moreover, respondent has not issued to petitioner a notice of deficiency for the taxable year 2015. Consequently, as of May 1, 2017, petitioner could not invoke the Court's deficiency jurisdiction under section 6213(a) for the years in question.

The record further shows that respondent had previously issued to petitioner notices of determination sustaining proposed levy actions for 2009 and 2010 under section 6330. By May 1, 2017, however, the 30-day period prescribed in section 6330(d)(1) for filing a timely petition for review of the proposed levy actions had expired. As of May 1, 2017, respondent had not issued to petitioner any notice of collection action for the taxable year 2015 that would permit him to invoke the Court's jurisdiction.

In sum, the Court will grant respondent's motion and dismiss the petition filed in this case for lack of jurisdiction. Given that the Court lacks jurisdiction in the first instance, it follows that the Court lacks jurisdiction to restrain assessment or collection. See secs. 6213(a), 6330(e).

Upon due consideration and for cause, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction, filed June 14, 2017, as supplemented March 16, 2018, is granted and this case is dismissed for lack of jurisdiction. It is further

ORDERED that petitioner's motion to restrain assessment or collection, filed July 25, 2017, is denied.

**(Signed) Daniel A. Guy, Jr.
Special Trial Judge**

ENTERED: **MAR 23 2018**