

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

JIM FLORES,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 7106-18.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

On April 30, 2018, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground that no notice of deficiency or notice of determination was issued to petitioner for taxable years 2013, 2014, 2015, 2016, and 2017 that would permit petitioner to invoke the Court's jurisdiction in this case. In support of his motion to dismiss, based upon a diligent search conducted of respondent's records, respondent states he has determined that no notice of deficiency or other notice of determination was issued to petitioners for taxable years 2013, 2014, 2015, 2016, and 2017 that would confer jurisdiction upon the Court. On May 18, 2018, petitioner filed a Response to respondent's motion to dismiss.

The petition in this case was filed on April 11, 2018. Petitioner seeks review of unspecified IRS notice(s) of unspecified dates allegedly issued to him for taxable years 2013 through 2017. No notice(s) of deficiency nor notice(s) of determination under I.R.C. section 6320 or 6330 issued to petitioner for 2013, 2014, 2015, 2016, and/or 2017 was attached by petitioner to the petition. In his petition petitioner asserts, inter alia:

I James Flores request review and appeal of decisions made to Tax account starting from 2013 -2017 of lost wages \* \* \* with an understanding I have a right to be heard and appeal

I James Flores no point in time was a subcontractor nor did I work professionally in business for myself. See attached check stubs and W2 as proof I was just an employee not a sub contractor.

I pray this court finds the truth and amends its record to reflect I was an employee of Dwain's Auto Tech and taken advantage of by the employer. My claim is I was taxed for dividends reported by Dwain's auto tech the employer for wages I was never paid.

Relief requested is amended tax debt owed to reflect paid in full or even a return of wages.

I was never paid greater than the amounts in the previous year's w-2 reflect. How I could possibly owe such an outstanding tax debit for income I never actually earned.

The Tax Court is a court of limited jurisdiction and may exercise jurisdiction only to the extent expressly provided by statute. I.R.C. sec. 7442; Naftel v. Commissioner, 85 T.C. 527, 529 (1985); Breman v. Commissioner, 66 T.C. 61, 66 (1976). Where this Court's jurisdiction in a case is duly challenged, the jurisdiction must be affirmatively shown. Romann v. Commissioner, 111 T.C. 273, 280 (1998); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960).

In a deficiency case, the jurisdiction of the Court depends on (1) the issuance by the Commissioner of a notice of deficiency, and (2) the filing of a petition within 90 days (or 150 days if the notice is addressed to a person outside the United States) after the notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day). Mulvania v. Commissioner, 81 T.C. 65, 67 (1983; Brown v. Commissioner, 78 T.C. 215, 220 (1982); Rule 13(a) and (c), Tax Court Rules of Practice and Procedure. 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, supra.

Similarly, in a case seeking review of a determination under I.R.C. section 6320 or 6330, the 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 the Internal Revenue Service Appeals Office 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. I.R.C. sec. 6320(c) and 6330(d)(1), Smith v. Commissioner, 124 T.C. 36, 38-39 (2005); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); Rule 330(b), Tax Court Rules of Practice and Procedure. A condition precedent 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 I.R.C. section 6320(a) or 6330(a) and calculated with reference to an underlying Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 or Final Notice of Intent To Levy and Notice of Your Right to a Hearing for the particular year. See discussion in Andre v. Commissioner, 127 T.C. 68, 69-70 (2006).

In his Response petitioners essentially does not dispute the jurisdictional allegations set forth in respondent's motion to dismiss. Rather, in his Response petitioner asserts, inter alia:

I have been an employee working for Dwain K Kowalski Dwain's Autotech  
\* \* \*

I was never a sub contractor in business for myself so no small business account will be located. I worked for this small business paying my taxes! I attached

previous year's w-2 to prove my taxes were being taken out and give an accurate guess how much income yearly I was being paid. The following years I was told my taxes were being taken out every week and at the end of the year I was given no w-2.

Due diligence on such a matter would be reviewing the account associated with the tax payers social security number. A Clear review of said account can reveal Dwain's Autotech lied to the IRS how much he paid for labor and they did not pay the tax money withheld from my paychecks.

The question of jurisdiction is every tax payer's right to be heard under public law  
\* \* \*

I pray this court grants relief in the form of a fresh start program. I am just a tax payer that is stuck paying taxes on over reported income I was never paid and tax that was already withheld by the small business.

Contrary to petitioner's argument, however, as discussed above, I.R.C. section 7442 does not provide the Court with unlimited jurisdiction over all tax-related issues and matters. This Court is a court of limited jurisdiction and may only exercise jurisdiction to the extent authorized by Congress. Naftel v. Commissioner, supra; Breman v. Commissioner, supra.

The record reflects that no notice of deficiency was issued to petitioner for 2013, 2014, 2015, 2016, and/or 2017 that would confer jurisdiction upon this Court to redetermine deficiencies in petitioner's tax for those years. Mulvania v. Commissioner, supra; Brown v. Commissioner, supra; Tax Court Rule 13(a). The record further reflects that no notice of determination under I.R.C. section 6320 or 6330 was issued to petitioner for 2013, 2014, 2015, 2016, and/or 2017 that would confer jurisdiction upon the Court. I.R.C. secs. 6320(c), 6330(d)(1); Smith v. Commissioner, supra; Offiler v. Commissioner, supra; Rule 330(b).

Petitioner has failed to affirmatively establish and demonstrate that this Court has jurisdiction as to this case. Romann v. Commissioner, supra; Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, supra. Accordingly, we will grant respondent's motion and dismiss this case for lack of jurisdiction.

The foregoing considered, it is

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction, filed April 30, 2018, is granted and this case is dismissed for lack of jurisdiction.

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

ENTERED: **MAY 22 2018**