

UNITED STATES TAX COURT
WASHINGTON, DC 20217

HARJIT BHAMBRA,)
) CZ
Petitioner(s),)
)
v.) Docket No. 1395-16 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

This is a collection due process (CDP) case in which the principal issue now before the Court is whether petitioner was precluded during his CDP hearing from raising challenges to civil fraud penalties determined by respondent with respect to petitioner's 2003 and 2004 taxable years. See secs. 6320(c) and 6330(c)(2)(B).¹ The question turns on whether petitioner received a statutory notice of deficiency for those years. We held an evidentiary hearing at which respondent introduced a copy of the statutory notice of deficiency and a certified mail record that established that, on October 10, 2012, respondent mailed duplicate copies of the notice to petitioner and his wife by certified mail to their last known address, 200 Grissom Street, Hercules, California, and to petitioner, in prison, Fed Reg No 14419-111, CI Taft Correctional Institution, Taft, CA 93268. In October 2012, petitioner's wife was no longer living at the Grissom Street address, and she credibly testified, and we find, that she did not receive the statutory notice. Petitioner likewise testified that he did not receive a copy of the notice. He testified that, in prison, mail is received by the prison authorities and there is a record of the mail a prisoner receives. On cross examination, respondent's counsel asked petitioner if he knew how long the prison keeps those records. Petitioner responded that he did not. Beyond that, respondent had no evidence with respect to the prison's mail procedures.

¹All section references are to the Internal Revenue Code of 1986 in effect for the years in question.

Respondent argues that, when he introduces a copy of a notice of deficiency and a certified mail list, the law provides a rebuttable presumption that the addressee of the notice received it. That is true. Respondent is relying on what is, in essence, the common law mailbox rule; i.e., proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed. See Garrett v. Commissioner, T.C. Memo. 2015-228, at *9. The presumption is not conclusive. Instead, it merely creates an inference that, if challenged, raises an issue of fact as to whether the item was actually received. Id. at *10. Petitioner has challenged the inference, but respondent argues that he should not be believed because he has a history of false statements, having been convicted of filing false tax returns in violation of section 7606(1) and of aiding or assisting in filing false tax returns in violation of section 7606(2). That is true, but it does not mean that petitioner always lies. Petitioner's claim of nonreceipt did not come as a surprise to respondent. He could have before the hearing learned from petitioner of his claim of a prison mail system, and he could have prepared a response, but he did not. Petitioner appeared credible in his claim of nonreceipt, and we find accordingly.

We shall remand this case to respondent's Appeals Office for a supplemental hearing during which petitioner may raise a challenge to respondent's determination of the civil fraud penalties. It is, therefore,

ORDERED that this case is remanded to respondent's Office of Appeals, at respondent's Appeals Office located closest to petitioner's place of residence or business (or at such other place as may be mutually agreed upon) at a reasonable and mutually agreed upon date and time, but no later than September 23, 2018, to afford petitioner a further opportunity to meet with respondent's Appeals Office for a supplemental hearing during which petitioner may raise a challenge to respondent's determination of the civil fraud penalties. It is further

ORDERED that the parties shall, on or before October 23, 2018, submit to the Court joint or separate reports regarding the then present status of this case.

(Signed) James S. Halpern
Judge

Dated: Washington, D.C.
July 23, 2018