

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

ALFRED P. RAY & HAZEL CARLA RAY,)	
)	
Petitioners,)	
)	
v.)	Docket No. 13535-18.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On August 31, 2018, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground that no notice of deficiency has been sent to petitioner for tax year 2016, nor has respondent made any determination concerning collection or any other determination that would confer jurisdiction on this Court for tax year 2016. On September 19, 2018, petitioners filed a Response to 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 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, 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 an Internal Revenue Service Appeals Officer 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. Smith v. Commissioner, 124 T.C. 36, 38-39 (2005); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); I.R.C. sec. 6320(c) and 6330(d)(1); Rule 330(b), Tax Court Rules of Practice and Procedure.

Respondent asserts in his motion that petitioners have challenged tax year 2014 in the case filed at docket number 26397-17, tax year 2015 in the case filed at docket number 25029-17, but that after a diligent search, respondent did not issue a notice of deficiency or any notice of determination for tax year 2016. In petitioners’ response, they acknowledge that no formal notice of deficiency was issued to them for tax year 2016. They did however send respondent a copy of a Notice CP2000, Notice of proposed changes to your 2016 Form 1040, which respondent attached to his motion. Petitioners argue that because they have received a multitude of notices from the Internal Revenue service, presumably the including the CP2000 they

provided to respondent, the Court should impute a notice of deficiency, invoke jurisdiction, and consolidate this case with their above-mentioned cases challenges tax years 2014 and 2015.

As a threshold matter, petitioners bear the burden of affirmatively showing jurisdiction exists as the party attempting to invoke the Court's jurisdiction. See David Dung Le, M.D., Inc. v Commissioner, 114 T.C.268, 270, aff'd, 22 Fed. Appx. 837 (9th Cir. 2001). Without a "ticket to the Tax Court" as explained above, the Court cannot invoke its jurisdiction. Petitioners have not established their burden with respect to tax year 2016. A Notice CP 2000 is a notice to taxpayers that the IRS intends to make changes to the return and invites the taxpayers to either agree or disagree. It is not a notice of deficiency. See I.R.C. sec 6313(b)(1). Moreover, the taxpayer has no right to file a petition with the Tax Court based on such a notice, and the IRS is not prohibited under I.R.C. sec. 6213 (a) from collection activity. Id. Likewise, if a letter notice is not a notice of deficiency, then the Court lacks jurisdiction. See Alford v. C.I.R., 800 F.2d 987 (1986).

The present record in this case fails to establish that either a notice of deficiency or a notice of determination concerning collection action was sent to petitioners for taxable year 2016. Accordingly, we are obliged to dismiss this case for lack of jurisdiction.

In view of the foregoing, it is

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

(Signed) Maurice B. Foley
Chief Judge

ENTERED: **SEP 21 2018**