

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

HUBERT W. CHANG, )  
)  
Petitioner, ) **CT**  
)  
v. ) Docket No. 307-18 L.  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent )

**ORDER**

On January 4, 2018, petitioner filed a petition with respect to respondent's collection action. Petitioner attached to his petition a Decision Letter on Equivalent Hearing Under Internal Revenue Code Sections 6320 and/or 6330<sup>1</sup> (decision letter) that respondent issued. On April 5, 2018, respondent filed a Motion to Dismiss for Lack of Jurisdiction (motion) on the ground that no notice of determination concerning collection action or any other notice of determination has been issued to petitioner for tax years 1999 through 2010 and 2014 that would confer jurisdiction on this Court. The motion was assigned to the undersigned for disposition.

In respondent's motion respondent asserted that he issued a Final Notice of Intent to Levy and Notice of Your Right To Request a Hearing (notice of intent to levy) on January 12, 2016, with respect to tax years 2003 and 2008. Respondent received petitioner's request for a collection due process (CDP) hearing with respect to the notice of intent to levy on February 16, 2016.<sup>2</sup> The envelope in

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<sup>1</sup> Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

<sup>2</sup> Respondent also asserted that petitioner had also requested a CDP hearing with respect to a Notice of Federal Tax Lien that was issued with respect to tax years 1999, 2000, 2001, 2002, 2003, 2008, 2009, 2010, and 2014 that was filed on October 6, 2015. Respondent received petitioner's request for a CDP hearing with respect to the Notice of Federal Tax Lien for 1999 to 2010 on February 16, 2016.

which it was mailed does not bear a postmark. Respondent asserted that petitioner did not timely request a CDP hearing but did request an equivalent hearing. Accordingly, respondent issued the decision letter and did not issue a notice of determination.

By order dated April 26, 2018, the Court directed petitioner to file a response to respondent's motion on or before May 18, 2018. On May 14, 2018, petitioner filed a Notice of Objection to Motion to Dismiss for Lack of Jurisdiction (objection). In his objection petitioner asserted that respondent had increased the collection statute expiration date by 10 years for 1999, 2000, 2001, and 2002, in contravention of "the Internal Revenue Service Restructuring and Reform Action of 1998". Petitioner further asserted that his petition that challenged this should not be dismissed even though he had previously petitioned and litigated a notice of determination with respect to a Notice of Federal Tax Lien for years 1996 through 2002.<sup>3</sup> Petitioner did not address the issue of whether his request for a CDP hearing with respect to either the notice of intent to levy or the notice of Federal tax lien had been timely filed.

The Court by order dated August 20, 2018, directed respondent to file a supplement to his motion on or before September 10, 2018, and following a diligent inquiry with knowledgeable U.S. Postal Service personnel to set forth and discuss fully when an envelope, properly addressed to the IRS requesting a CDP hearing would ordinarily have been received at the IRS. On September 10, 2018, respondent filed a First Supplement to Motion to Dismiss for Lack of Jurisdiction (first supplement). In support of his first supplement respondent attached a letter from Erling "Skip" Ericksen, Manager Customer Service at the United State Postal Service in the Downtown Station of Hawaii, discussing the mail delivery times and standards for the United State Post Office between a 967 or 968 zip code to another 967 or 968 zip code. Mr. Ericksen stated that with respect to respondent's receipt

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Respondent issued a decision letter with respect to 2003, 2008, 2009, and 2010 and in his motion respondent asserts that petitioner did not establish that he timely requested a CDP hearing with respect to the Notice of Federal Tax Lien.

<sup>3</sup> Petitioner filed a petition to challenge respondent's notice of determination with respect to a Notice of Federal Tax Lien filing for 1996, 1997, 1998, 1999, 2000, 2001, and 2002. The Court held that petitioner was not entitled to challenge the underlying tax liabilities for those years and that respondent did not abuse his discretion in filing the Federal tax lien. Accordingly, the Court sustained the notice of determination. Chang v. Commissioner, T.C. Memo. 2007-100 (2007).

of the envelope in this case on February 16, 2016, “the mailpiece would have had to be mailed on February 13<sup>th</sup> (Saturday [sic]) because Monday was Presidents [sic] Day Holiday and we do not deliver letter class mail on Sundays or Holidays so it was delivered on Tuesday the 16<sup>th</sup>.”

On October 30, 2018, petitioner filed a Notice of Objection to First Supplement to Motion to Dismiss for Lack of Jurisdiction (objection to first supplement). In the objection to first supplement petitioner asserted, among other things, that mail can take up to two days to be delivered from zip code 96816 to zip code 96813. In support of the objection to first supplement petitioner attached Internal Revenue Service (IRS) Account Transcripts for years 1998 to 2003 and an email between petitioner and Rick Peart, Director of Client Services at Colonial Tax Consultants, Inc. dated February 8, 2018.

On November 13, 2018, this Court held a conference call with the parties. During the conference call, petitioner disputed the information contained in the letter attached to respondent’s first supplement.

Upon due consideration, it is

ORDERED that, on or before November 29, 2018, petitioner shall file a supplement to his Notice of Objection to First Supplement to Motion to Dismiss for Lack of Jurisdiction setting forth and discussing fully when an envelope, properly addressed to the IRS requesting a CDP hearing would ordinarily have been received at the IRS and attach as an exhibit any statement by a U.S. Postal Service employee that petitioner obtains in support of his assertion that the CDP hearing request was timely mailed.

**(Signed) Diana L. Leyden**  
**Special Trial Judge**

Dated: Washington, D.C.  
November 16, 2018