

UNITED STATES TAX COURT
WASHINGTON, DC 20217

AMY ARNOLD,)	SYM
)	
Petitioner,)	
)	
v.)	Docket No. 25750-17S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On August 2, 2018, the Commissioner filed a motion to dismiss for lack of jurisdiction that was riddled with errors. On August 3, 2018, we denied that motion without prejudice and left it to the Commissioner to fix those errors. The Commissioner refiled his motion, this time with fewer errors, but without correcting some of the very same errors that we explicitly noted in our August 3 order. Those errors notwithstanding, we will address this latest motion on the merits, relying on the documents to which the parties stipulated and not the parties' characterization of those documents.

Introduction

Ms. Arnold inadvertently filed her 2016 return using an old address. A few months later, when the Commissioner sent Ms. Arnold notices of deficiency for 2014 and 2015, he sent those notices to the address shown on Ms. Arnold's most recently filed return—the 2016 return showing the old address. More than 90 days after the Commissioner sent those notices, Ms. Arnold filed a petition regarding 2014 through 2016. We must dismiss 2014 and 2015 either because the Commissioner mailed the notices to the wrong address or because Ms. Arnold did not file a timely petition. Because the Commissioner mailed the notices of deficiency for 2014 and 2015 to the address shown on the most recently filed and properly processed return, the notices of deficiency are valid and the petition is untimely. We must also dismiss as to 2016, because the Commissioner did not mail a notice of deficiency for that year.

Background

Ms. Arnold relocated in 2015. Before she moved, Ms. Arnold lived on Earl Street in Harrison Township, Michigan. When she filed her 2014 return, in early 2015, she showed Earl Street as her address.¹ Ms. Arnold purchased a home on Fuller Road in New Baltimore, Michigan.² When it came time to file her 2015 return, in early 2016, Ms. Arnold used her new Fuller Road address.

But then she filed her 2016 return showing the old Earl Street address. According to Ms. Arnold, she had used the same return preparer for several years. Sometime before preparing her 2016 return, the return preparer's computer system crashed. When he restored data to the system, he pulled the data from the 2014 returns. For Ms. Arnold, this meant that the old and incorrect Earl Street address was put into the system. When preparing the 2016 return, the system used the Earl Street address. Neither the return preparer nor Ms. Arnold noticed the error, and she filed her return using the old Earl Street address.

On May 26, 2017, the Commissioner sent Ms. Arnold a notice of deficiency for 2014 by certified mail to the old Earl Street address. Sometime after the Commissioner mailed the 2014 notice of deficiency to the Earl Street address, Ms. Arnold submitted a Form 2848, Power of Attorney and Declaration of Representative, showing her Fuller Road address.³ On September 8, 2017,

¹The parties stipulated that "Petitioner's address, as stated on the Form 1040 U.S. Individual Tax Return for taxable year 2014 was * * * Fuller Rd., Chesterfield, MI 48051." The accompanying exhibit shows that the address stated on the 2014 Form 1040 was the Earl Street address. We can disregard a stipulation that is "clearly contrary to facts disclosed by the record" and we will do so here. Jasionowski v. Commissioner, 66 T.C. 312, 318 (1976).

²The parties refer to the Fuller Road address as being in Chesterfield, Michigan. Ms. Arnold's 2015 return identifies the Fuller Road address as being in New Baltimore, Michigan. Because the address shown on the return is material for purposes of this case, we refer to the Fuller Road address as being in New Baltimore.

³The Form 2848 indicates that it was signed on August 10, 2017, but the record does not indicate when it was first provided to the Commissioner. For purposes of this motion, we will assume that it was provided to the Commissioner before he mailed the 2015 notice of deficiency.

Commissioner sent Ms. Arnold a notice of deficiency for 2015 by certified mail to the old Earl Street address. The record is unclear whether or when Ms. Arnold actually received the 2014 and 2015 notices of deficiency.

On December 8, 2017, Ms. Arnold mailed a petition disputing the 2014 and 2015 notices of deficiency as well as disputing 2016, for which the Commissioner did not issue a notice of deficiency. The Court received that petition on December 11, 2017.

On October 3, 2018, the Commissioner filed a motion to dismiss for lack of jurisdiction. The Commissioner argues that we lack jurisdiction because Ms. Arnold's petition was untimely as it relates to 2014 and 2015 and because no notice of deficiency was issued for tax year 2016.

Analysis

The issue before us is whether we should grant the Commissioner's motion to dismiss for lack of jurisdiction. We have deficiency jurisdiction—jurisdiction “to redetermine the correct amount of * * * [a] deficiency”—when the Commissioner mails a valid notice of deficiency to the taxpayer and the taxpayer timely files a petition with us disputing the deficiency.⁴ “A valid notice of deficiency is therefore both the necessary ‘ticket to the Tax Court,’ i.e., it permits the taxpayer to file a petition which is necessary for the Court to obtain jurisdiction, and it is a prerequisite to the assessment of the deficiency, with certain exceptions.”⁵ “If the notice is not validly sent or the petition is not timely filed, we do not have jurisdiction to redetermine the deficiency.”⁶

“The Commissioner properly sends a notice of deficiency if he mails the notice to the taxpayer at the taxpayer's last known address regardless of whether the taxpayer actually receives the notice”.⁷ A taxpayer's last known address is “the

⁴Secs. 6214(a), 6213(a).

⁵Baron v. Commissioner, 71 T.C. 1028, 1034 (1979).

⁶Gregory v. Commissioner, 152 T.C. ___, ___ (slip op. at 5) (Mar. 13, 2019).

⁷Gregory, 152 T.C. at ___ (slip op. at 6); Sec. 6212(a) and (b)(1).

address that appears on the taxpayer's most recently filed and properly processed Federal tax return, unless the Internal Revenue Service (IRS) is given clear and concise notification of a different address."⁸ A Form 2848 is not a return for purposes of updating a taxpayer's last known address and is not clear and concise notification of a different address.⁹

The Notice of Deficiency for Tax Year 2014 Was Validly Sent

The notice of deficiency for tax year 2014 was validly sent to Ms. Arnold's last known address. When the Commissioner mailed the 2014 notice of deficiency on May 26, 2017, Ms. Arnold's most recently filed and properly processed Federal tax return was her 2016 Form 1040. That return contained her old Earl Street address. There is no evidence that she provided any clear and concise notification of a different address after filing that return and before mailing of the 2014 notice of deficiency. Thus, her Earl Street address was her last known address as of the mailing of the 2014 notice of deficiency.

The Notice of Deficiency for Tax Year 2015 Was Validly Sent

The 2015 notice of deficiency was also validly sent to Ms. Arnold's last known address. When the Commissioner mailed the 2015 notice of deficiency on September 8, 2017, Ms. Arnold's most recently filed and properly processed Federal tax return was still her 2016 Form 1040. After filing that return, Ms. Arnold submitted a Form 2848 that included her new Fuller Road address. But as we held in Gregory, the Form 2848 and its instructions explicitly disavow its use for any purpose other than representation before the IRS.¹⁰ As a result, Ms. Arnold's last known address was still the Earl Street address, and the Commissioner validly sent the 2015 notice of deficiency to that address.

⁸Sec. 301.6212-2(a), *Proced. & Admin. Regs.*

⁹Gregory v. Commissioner, 152 T.C. at __ (slip op. at 9).

¹⁰Gregory v. Commissioner, 152 T.C. at __ (slip op. at 9).

Ms. Arnold's Petition Was Untimely For 2014 and 2015

Ms. Arnold did not timely file a petition for the 2014 and 2015 notices of deficiency. A taxpayer may file a petition with our Court for the redetermination of a deficiency within 90 days after a notice of deficiency is mailed.¹¹ The 2014 notice of deficiency was mailed to Ms. Arnold on May 26, 2017, and the 90-day period for timely filing a petition to dispute that notice expired on Thursday, August 24, 2017.¹² The 2015 notice of deficiency was mailed to Ms. Arnold on September 8, 2017, and the 90-day period to dispute that notice expired on Thursday, December 7, 2017.¹³ Ms. Arnold mailed her petition on December 8, 2017, and we received the petition on December 11, 2017, both dates being after the 90-day period for filing a petition from either notice of deficiency.¹⁴ Because the petition was untimely, we lack jurisdiction over 2014 and 2015.

¹¹Sec. 6213(a).

¹² In his motion, the Commissioner continues to represent that the petition for 2014 was due on August 23, 2017. He made the same representation in his previous motion to dismiss. That statement is incorrect. The 2014 notice of deficiency is dated May 25, 2017, but that date is contradicted by the postmark on the certified mail list, which shows a mailing date of May 26, 2017. Ninety days from the actual date of mailing of the notice of deficiency is August 24, 2017, not August 23 as alleged in the Commissioner's motion.

The precise date of mailing can be material. Section 6213(a) provides the time for filing a petition is "[w]ithin 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed". (Emphasis added.) The operative date is not the date printed on the notice of deficiency, but rather the date it was actually mailed.

¹³ The same mailing date issue that exists for 2014 also arises with the notice of deficiency for 2015. Although the 2015 notice of deficiency is dated September 7, 2017, it was mailed on September 8, 2017. Ninety days from the actual date of mailing of the notice of deficiency is December 7, 2017, not December 6 as alleged in the Commissioner's motion.

¹⁴If a petition is mailed on or before but received after the expiration of 90-day period within which to file a petition, then the date of mailing is treated as the filing date. See sec. 7502(a)(1).

A Notice of Deficiency for Tax Year 2016 Was Not Sent

The Commissioner states that he did not issue a notice of deficiency for 2016. Ms. Arnold does not allege otherwise. Because the Commissioner did not issue a notice of deficiency for 2016, Ms. Arnold lacks the necessary “ticket to the Tax Court” from which she could file a petition for that year. As a result, we lack jurisdiction over 2016.

Taking into consideration the foregoing, it is

ORDERED that the Commissioner’s motion to dismiss for lack of jurisdiction filed October 3, 2018, is granted, and this case is dismissed as to all years.

**(Signed) Ronald L. Buch
Judge**

Entered: **MAR 29 2019**