

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

ALFRED Q. CAMPBELL, III,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 3597-17 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

In this collection due process (CDP) case, petitioner seeks review pursuant to I.R.C. § 6330(d) of the determination by the Internal Revenue Service (IRS or respondent) to uphold the issuance of a notice of intent to levy. Respondent has represented that he will abate petitioner's liability for 2010, so petitioner's 2009 liability is now the focus of dispute. Respondent has moved for summary judgment as to that year. On June 10, 2019, petitioner filed an objection to respondent's motion and a cross-motion for summary judgment, in which he contends for the first time that the IRS settlement officer (SO) failed to verify that the 2009 notice of deficiency had been issued by someone duly authorized by the Secretary of the Treasury.

In the initial CDP hearing petitioner asserted he that he had not received a notice of deficiency for 2009, but the SO sustained the collection action. Petitioner petitioned for review and, on June 8, 2017, we remanded the case to the IRS Appeals Office. On remand the SO secured copies of the notice of deficiency and the certified mail list, found that the notice had been mailed to petitioner's last known address, and again sustained the collection action.

The record shows that the notice of deficiency for 2009 was issued on December 10, 2012, by the IRS Service Center in Ogden, Utah. It took the form of a Letter 3219 (SC/CG), and it was signed on behalf of the Commissioner by Bill Banowsky. The initials S1STSIGA appear immediately beneath his signature. Petitioner did not contend in the original hearing, the supplemental hearing, or his petition that Mr. Banowky was not duly authorized to issue the notice of deficien-

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cy. Rather, he raised this argument for the first time when responding to the summary judgment motion.

Notices of deficiency are valid if issued by the Secretary of the Treasury or his delegate. Kellog v. Commissioner, 88 T.C. 167, 172 (1987); Muncy v. Commissioner, T.C. Memo. 2017-83; see secs. 6212(a); 7701(a)(11)(B), (12)(A)(i). In reviewing the SO's determination to sustain a collection action, we consider whether the SO abused his discretion in determining that the assessment for a particular year was valid. See I.R.C. §6330(c)(1). This case presents a threshold question whether an SO, in verifying an assessment, must consult Treasury Department delegation orders sua sponte in circumstances where the taxpayer has not raised this issue during the CDP hearing.

In two recent CDP cases the Court has considered whether notices of deficiency were signed by duly authorized individuals. See Gregory v. Commissioner, T.C. Memo. 2018-192 at \*8-\*9; Williams v. Commissioner, T.C. Memo. 2018-50 at \*5. In each case the Court held that the notices were valid because the person signing each notice was authorized by IRS Delegation Order 4-8, as set forth in the Internal Revenue Manual pt 1.2.43.9 (Sept. 4, 2012). Because the signatory was duly authorized, we had no need to decide whether an SO would abuse his discretion if he did not investigate that question sua sponte.

The Court would benefit from knowing respondent's position on two questions: (1) whether a taxpayer may challenge in this Court an SO's verification of an assessment on the ground that the person signing the notice of deficiency lacked delegated authority to do so, where the taxpayer did not advance that argument at any point during the CDP hearing or (as here) the supplemental hearing; and (2) whether Mr. Banowsky was duly authorized to issue the notice of deficiency in this case.

In consideration of the foregoing, it is

ORDERED that respondent shall file a response to petitioner's objection and cross-motion on or before August 12, 2019, addressing the matters set forth above.

**(Signed) Albert G. Lauber**  
**Judge**

Dated: Washington, D.C.  
July 5, 2019