

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRB

Kedar Roberts,)
)
Petitioner,)
)
v.) Docket No. 24505-12SL.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

This section 6330(d)¹ case is before the Court on respondent's Motion to Dismiss for Lack of Jurisdiction, filed December 5, 2012. Respondent's motion is based upon the ground that the petition was not filed within the applicable period for doing so. Petitioner's objection to respondent's motion was filed January 7, 2013.²

The facts relevant to the disposition of respondent's motion are easily summarized. In a Notice of Determination Concerning Collection Action(s) Under Sections 6320 and/or 6330, dated and mailed on October 3, 2012 (notice), respondent determined that a Notice of Federal Tax Lien is an appropriate collection action with respect to certain of petitioner's outstanding Federal tax liabilities. The motion shows that the petition in this case, delivered to and filed by the Court on October 3, 2012, was mailed to the Court on September 29, 2012, a date that precedes the date the petition was filed. According to respondent's motion, because the "petition is premature" the Court is without jurisdiction.³ Relying on section 7502, respondent's motion proceeds as though the date that the petition was mailed should be treated as the date that the petition was filed.

¹Section references are to the Internal Revenue Code of 1986, as amended.

²Petitioner's "objection" to respondent's motion is embodied in a document styled "Objection to Motion to Dismiss Pleadings Lack of Ratification of Commencement and the Real Party in Interest" received from petitioner on Jan. 7, 2013. The document presents no opposition to respondent's motion on factual or legal grounds; instead it advances positions that could subject petitioner to the imposition of a sec. 6673 penalty.

³We assume, without finding, that as a general proposition in a sec. 6330(d) case, respondent's position in this regard has merit. Cf. Headley v. Commissioner, T.C. Memo. 2007-7, 2007 WL 63757, at *3.

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As relevant here, section 7502 is applicable if a petition is delivered to the Court after the period prescribed in section 6330(d) expires. If that occurs, then, for jurisdictional purposes and under conditions set forth in the statute, the date that the petition was mailed is treated as the date the petition is filed. That is not the situation here; the petition was not delivered after the period prescribed by section 6330(d) expired. Consequently, section 7502 does not apply. The date that the petition was mailed is not taken into account; the date that the petition was received by the Court and filed controls.

The notice was mailed October 3, 2012. The petition was not received by the Court or filed before that date. Accordingly, the petition was filed within the applicable period set forth in section 6330(d). Premises considered, it is

ORDERED that respondent's motion is denied.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
January 22, 2013