

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

GARY A. BELL, SR., )  
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Petitioner, )  
) **CT**  
v. ) Docket No. 27787-16.  
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COMMISSIONER OF INTERNAL REVENUE, )  
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Respondent )  
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**ORDER AND ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

This case is presently before the Court on respondent’s Motion To Dismiss For Lack Of Jurisdiction, filed February 10, 2017. Petitioner filed a Notice Of Objection to respondent’s motion on March 15, 2017. Most recently this case was assigned to the undersigned by Order dated July 17, 2017, for the purpose of deciding respondent’s motion.

I. Background

On December 28, 2016, petitioner filed a petition with this Court.<sup>1</sup> The petition is essentially a protest against the revenue system of this country.<sup>2</sup> Although the petition alleges that “The attached notices of deficiency [for 2003, 2004, 2005, and 2012] \* \* \* are bootleg and bogus”, no notice of deficiency or notice of determination is attached to the petition. Rather, the only documents that

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<sup>1</sup> At the time that the petition was filed petitioner resided in the State of Missouri.

<sup>2</sup> For example, the petition alleges that “The Secretary of Treasury has never promulgated in the Federal Register the Implementing-Regulations that impose obligations upon the general public of the 50 states of the Union and is a mandatory requirement for all Federal Agencies via the Federal Register Act.”

are attached are four Notices CP71A, one for each of the years 2003, 2004, 2005, and 2012. A Notice CP71A is an annual reminder of overdue tax that the Commissioner is obliged to send to a taxpayer who has a tax delinquent account. See I.R.C. sec. 7524. A Notice CP71A is not a notice of deficiency, see I.R.C. sec. 6212, nor a notice of determination, see I.R.C. secs. 6320(c) and 6330(c).

A. Petitioner's Liabilities for 2003, 2004, and 2005

In December 2009 respondent sent petitioner separate notices of deficiency determining deficiencies in income taxes and additions to tax ("penalties") for 2003, 2004, and 2005. See I.R.C. sec. 6212. Petitioner responded by commencing an action for redetermination in this Court at dkt. No. 7777-10. See I.R.C. sec. 6213(a). Ultimately, in an Order And Decision that was entered on December 7, 2010, the Court granted respondent's motion for summary judgment and essentially sustained respondent's determinations in the notices of deficiency.<sup>3</sup> Although petitioner filed a motion to vacate, which was denied, he did not file a notice of appeal, and the Court's decision became final in 2011. See I.R.C. secs. 7481(a)(1), 7483.

Notably, the Court's Order And Decision at dkt. No. 7777-10 included the following statements:

The allegations raised by petitioner throughout this litigation consist solely of frivolous and groundless arguments. \* \* \* [P]etitioner has expressly conceded receiving the wages in question and has been noncommittal about the interest, yet he has maintained that the funds he received do not constitute "income" subject to the Federal income tax. However, the law clearly provides to the contrary.

B. Petitioner's Liability for 2012

Petitioner filed an income tax return for 2012 and reported taxable income of \$305,546 and tax of \$92,329. After withholding of \$62,818, a balance of \$29,511 was due, which petitioner did not pay.<sup>4</sup>

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<sup>3</sup> The Order And Decision reflected respondent's concession of one of the three additions to tax for 2005 but otherwise sustained all of respondent's determinations for 2003, 2004, and 2005.

<sup>4</sup> In addition to the balance due, petitioner also became liable for an addition to tax for late payment and statutory interest. See I.R.C. secs. 6651(a)(2), 6601; 6665(a).

C. Respondent's Motion and Petitioner's Objection

On February 10, 2017, respondent filed his Motion To Dismiss For Lack Of Jurisdiction. Insofar as the taxable (calendar) year 2012 is concerned, respondent's motion is premised on the fact that neither a notice of deficiency nor a notice of determination has been issued for that year. Insofar as the taxable (calendar) years 2003, 2004, and 2005 are concerned, respondent's motion is premised on the fact that no notice of determination has been issued for any of those years and the further fact that petitioner's liability for all three years was conclusively decided by the Court in the case at dkt. No. 7777-10.

In his motion to dismiss, respondent also moves that "the Court impose a penalty, in an appropriate amount, pursuant to I.R.C. § 6673 based upon the fact that the petitioner has instituted these proceedings primarily for the purpose of delay as petitioner's position in the present case is frivolous or groundless." In that regard respondent painstakingly describes at length the many prior cases that petitioner has commenced in this Court and the multiple warnings that petitioner has received from the Court about making frivolous and groundless arguments that might lead to the imposition of a penalty of up to \$25,000 under I.R.C. section 6673. See dkt. No. 21046-15L (dismissing the case for lack of jurisdiction and "strongly" warning petitioner that if he should advance frivolous or groundless arguments in the future a penalty of up to \$25,000 might be imposed); dkt. No. 4424-15 (same); dkt. No. 27929-14 (same); dkt. No. 7777-10 (characterizing petitioner's contentions as frivolous and groundless, as previously quoted above). See also dkt. No. 17575-14 (dismissing petitioner's case for lack of jurisdiction); dkt. No. 16727-14 (same).

On March 15, 2017, petitioner filed a Notice Of Objection to respondent's motion. Petitioner's Notice Of Objection is replete with frivolous and groundless arguments, which include the following:

According to IRC, I, the petitioner, do/does not fall under the definition of “Person”, Person is defined as a Corporation, Partnership, Legal Representative, Labor Organizations.

Income Tax is defined as a tax on profits, a “Persons” income, wages, salary, commissions.

I, the Petitioner am/is not Incorporated or a Corporation, A Legal Representative or any entity defined by the IRC.

## II. Discussion

### A. Jurisdiction in General

The Tax Court is a court of limited jurisdiction. See I.R.C. sec. 7442. Accordingly, the Court may exercise jurisdiction only to the extent expressly authorized by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In addition, jurisdiction must be proven affirmatively, and a party invoking the Court’s jurisdiction bears the burden of proving that the Court has jurisdiction over the party’s case. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960); National Comm. to Secure Justice, Etc. v. Commissioner, 27 T.C. 837, 839 (1957). In order to meet this burden, the party must establish affirmatively all facts giving rise to the Court’s jurisdiction. See Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. at 180; Consolidated Co. v. Commissioner, 15 B.T.A. 645, 651 (1929).

### B. Actions for Redetermination

In an action for the redetermination of a deficiency, the Court’s jurisdiction under section 6213(a) depends on the issuance by the Commissioner of a notice of deficiency to the taxpayer and the timely filing of a petition by the taxpayer. Frieling v. Commissioner, 81 T.C. 42, 46 (1983); Tax Court Rule 13(a). 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 the Court of the deficiency determined by the Commissioner. Mulvania v. Commissioner, 81 T.C. 65, 67 (1983).

If a taxpayer receives a notice of deficiency and commences an action for redetermination, and if the Court subsequently enters a decision that becomes final, then thereafter the taxpayer is barred by the doctrine of res judicata from

relitigating the deficiency. See Commissioner v. Sunnen, 333 U.S. 591, 597-598 (1948), clearly stating that the doctrine is applicable in the Federal income tax field:

Income taxes are levied on an annual basis. Each year is the origin of a new liability and of a separate cause of action. Thus if a claim of liability or non-liability relating to a particular tax year is litigated, a judgment on the merits is res judicata as to any subsequent proceeding involving the same claim and the same tax year.

Id. at 598; see also Koprowski v. Commissioner, 138 T.C. 54, 59-60 (2012) (Court reviewed). Although the doctrine of res judicata is not jurisdictional in nature, the doctrine does serve to bar a taxpayer from relitigating deficiencies and penalties previously decided by the Court in a case that is final. Koprowski v. Commissioner, 138 T.C. at 59 note 3.

#### C. Actions for Collection Review

In a collection review action, this Court's jurisdiction under sections 6320 and 6330 depends, in part, on the issuance of a notice of determination by respondent's Office of Appeals after the taxpayer has requested an administrative hearing following the issuance by respondent's collection division of either a final notice of intent to levy, see I.R.C. sec. 6330(a), or a notice of filing of Federal tax lien, see I.R.C. sec. 6320(a). See Sarrell v. Commissioner, 117 T.C. 122, 125 (2001); Moorhous v. Commissioner, 116 T.C. 263, 269 (2001); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); see also Tax Court Rule 330(b).

#### D. Penalty Under I.R.C. Section 6673(a)(1)

As relevant, I.R.C., section 6673(a)(1) provides that this Court may require a taxpayer to pay a penalty not in excess of \$25,000 whenever it appears that the proceedings were instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position is frivolous or groundless.

A taxpayer's position is frivolous if it is "contrary to established law and unsupported by a reasoned, colorable argument for change in the law." Williams v. Commissioner, 114 T.C. 136, 144 (2000) (quoting Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986)). The purpose of section 6673 is to compel taxpayers to think and to conform their conduct to settled tax principles; it was

designed to deter frivolity and waste of judicial resources. See Coleman v. Commissioner, 791 F.2d 68; Grasselli v. Commissioner, T.C. Memo. 1994-581.

### III. Conclusions

The record in this case, as demonstrated by respondent's transcripts of account and by petitioner's failure to show otherwise, establishes that no notice of deficiency, within the meaning of I.R.C. section 6212, has been issued for 2012. The record similarly establishes that no notice of determination, within the meaning of I.R.C. section 6330(c), has been issued for 2003, 2004, 2005, or 2012. Accordingly, an essential prerequisite to support redetermination jurisdiction (for 2012) and collection review jurisdiction (for 2003, 2004, 2005, and 2012) is lacking.

Further, the record demonstrates that petitioner commenced a redetermination action in 2010 at dkt. No. 7777-10 in respect of respondent's deficiency and penalty determinations for 2003, 2004, and 2005 and that the Court's decision in that case became final in 2011. Pursuant to the doctrine of res judicata petitioner is barred from relitigating those determinations.

Finally, petitioner is no stranger to this Court and has been repeatedly warned about the potential consequence of making frivolous or groundless arguments. Given petitioner's failure to take those warnings to heart and his persistence in uttering tax protestor rhetoric in the present case, the time has come to impose a penalty under I.R.C. section 6673(a)(1). The decision to do so is bolstered by the fact that the Court is also convinced that petitioner instituted and maintained this proceeding primarily, if not exclusively, for purposes of delay; having to deal with this matter wasted the Court's time, as well as respondent's, and taxpayers with genuine controversies may have delayed.

In view of the foregoing, it is hereby

ORDERED that respondent's Motion To Dismiss For Lack Of Jurisdiction, filed February 10, 2017, is granted. It is further

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ORDERED that petitioner is liable for a penalty under I.R.C. section 6673(a) in the amount of \$5,000.

**(Signed) Robert N. Armen  
Special Trial Judge**

ENTERED: **JUL 31 2017**