

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

ELLIOT P. KAKON & ETTIE A. KAKON,	)	
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Petitioners,	)	
	)	
v.	)	Docket No. 24248-17S.
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COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
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**ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

On November 20, 2017, a petition was filed to commence the above-docketed matter, alleging dispute with a notice of deficiency. September 27, 2017, was referenced as the date of such notice of deficiency, and the taxable years 2009, 2010, 2012, and 2013 were identified as the periods in dispute. No notices of deficiency or determination issued by the Internal Revenue Service (IRS) were attached to the petition. Instead, attached to the petition were copies various IRS communications and forms, including: (1) A letter from the IRS Office of Appeals in Atlanta, Georgia, dated September 27, 2017, advising petitioners that disallowance of their claim for abatement and/or refund of taxes for 2009, 2010, and 2012 was being sustained; (2) a secibd letter from the IRS Office of Appeals in Atlanta dated September 27, 2017, advising petitioners that \$249 of their claim for abatement and/or refund of taxes for 2013 was being allowed and that denial of the balance was being sustained; (3) a letter from the IRS Office of Appeals in Atlanta dated August 29, 2017, detailing the basis for the conclusions on the claims for abatement and/or refund of 2009, 2010, 2012, and 2013 taxes; (4) four IRS Forms 843, Claim for Refund and Request for Abatement, dated August 12, 2016, submitted by petitioners to the agency for 2009, 2010, 2012, and 2013 income taxes, respectively; (5) an IRS Form 12203, Request for Appeals Review, dated June 15, 2015, and related Transfer to Appeals Request, submitting by petitioners to seek review of the outcome of examination of their 2012 and 2013 returns; (6) an IRS Form 4549, Income Tax Examination Changes, dated May 1, 2015, detailing the computations for 2012 and 2013 proposed in the examination process; (7) an IRS Letter 86C dated March 16, 2015, advising petitioners that consideration of their claim for 2010 taxes was being transferred to the Brookhaven, New York, office; (8) an IRS Form 12203, Request for Appeals Review, dated June 5, 2013, and related Transfer to Appeals Request, submitting by petitioners to seek review of the outcome of examination of their 2009 and 2010 returns; and (9)

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multiple documents from 2013 regarding the 2006 year and reflecting substantial allowance of petitioners' claim for abatement, apparently offered to demonstrate the type of resolution that petitioners believed to be warranted for 2009, 2010, 2012, and 2013. The statements made by petitioners in the petition highlighted in particular allegations of improper activities by the IRS personnel, especially in Atlanta, Georgia, and failure to transfer petitioners' case to the Manhattan office in New York.

Subsequently, on March 19, 2018, respondent filed a Motion To Dismiss for Lack of Jurisdiction, and two supplements to the motion followed on April 12, 2018, and May 30, 2018. The general premise of the motion, as supplemented, was that, as of the date the petition herein was filed, no notice of deficiency or determination had been issued that would allow petitioners to invoke the Court's jurisdiction at that juncture. More specifically, the motion as supplemented set forth circumstances indicating as grounds for dismissal: (1) As to 2009 and 2010, that the petition was not timely filed within the statutory period prescribed by section 6330(d) or 7502 of the Internal Revenue Code (I.R.C.), with respect to a notice of determination concerning collection action for taxable years 2009 and 2010, nor had respondent made any other determination with respect to petitioners' tax years 2009 and 2010 that would confer jurisdiction on the Court, as of the date the petition herein was filed; and (2) as to 2012 and 2013, that the petition was not filed within the time prescribed by section 6213(a) or 7502, I.R.C., with respect to deficiencies for taxable years 2012 and 2013, nor had respondent made any other determination with respect to petitioners' tax years 2012 and 2013 that would confer jurisdiction on the Court, as of the date the petition herein was filed. Respondent attached to the motion or supplements copies of: (1) A Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code for taxable years 2009 and 2010 dated February 5, 2014; (2) a notice of deficiency for tax year 2012 dated December 29, 2014, issued to petitioners; (3) a certified mail list reflecting the sending of a notice of deficiency for tax year 2013 to petitioners on July 23, 2015; and (4) IRS account transcripts for each of petitioners' 2009, 2010, 2012, and 2013 years, all reflecting zero balances. Respondent also explained that while IRS records demonstrated that additional taxes were assessed in 2012 for petitioners' 2009 and 2010 years after examinations, those records did not indicate whether petitioners agreed to the results or defaulted on a notice or notices of deficiency.

This Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In a case seeking the redetermination of a deficiency, the jurisdiction of the Court depends, in part, on the issuance by the Commissioner of a valid notice of deficiency to the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Frieling v. Commissioner, 81 T.C. 42, 46 (1983). 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 this Court of the deficiency determined by the Commissioner. Mulvania v. Commissioner, 81 T.C. 65, 67 (1983). The jurisdiction of the Court in a deficiency case also depends in part on the timely filing of a petition by the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Brown v. Commissioner, 78 T.C. 215, 220 (1982). In this regard, section 6213(a), I.R.C., provides that the petition must be filed with the Court within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day). The Court has no authority to extend this 90-

day (or 150-day) period. Joannou v. Commissioner, 33 T.C. 868, 869 (1960). However, a petition shall be treated as timely filed if it is filed on or before the last date specified in such notice for the filing of a Tax Court petition (but after issuance), a provision which becomes relevant where that date is later than the date computed with reference to the mailing date. Sec. 6213(a), I.R.C. Likewise, if the conditions of section 7502, I.R.C., are satisfied, a petition which is timely mailed may be treated as having been timely filed.

Similarly, this Court's jurisdiction in a case seeking review of a determination concerning collection action under section 6320 or 6330, I.R.C., depends, in part, upon the issuance of a valid notice of determination by the IRS Office of Appeals under section 6320 or 6330, I.R.C. Secs. 6320(c) and 6330(d)(1), I.R.C.; Rule 330(b), Tax Court Rules of Practice and Procedure; Offiler v. Commissioner, 114 T.C. 492 (2000). A condition precedent to the issuance of a notice of determination is the requirement that a taxpayer have requested a hearing before the IRS Office of Appeals within the 30-day period specified in section 6320(a) or 6330(a), I.R.C., and calculated with reference to an underlying Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320, Final Notice of Intent To Levy and Notice of Your Right to a Hearing (or the equivalent Notice CP90, Intent to seize your assets and notice of your right to a hearing, depending on the version of the form used), or analogous post-levy notice of hearing rights under section 6330(f), I.R.C. (e.g., a Notice of Levy on Your State Tax Refund and Notice of Your Right to a Hearing).

A late or untimely request for a hearing nonetheless made within a one-year period calculated with reference to one of the types of final notice of lien or levy just described will result only in a so-called equivalent hearing and corresponding decision letter, which decision letter is not a notice of determination sufficient to invoke this Court's jurisdiction under section 6320 or 6330, I.R.C. Kennedy v. Commissioner, 116 T.C. 255, 262-263 (2001). A request for a hearing made after said one-year period will be denied, and neither a hearing under section 6320 or 6330, I.R.C., nor an equivalent hearing will be afforded. Secs. 301.6320-1(i)(2), Q&A-I7, I11; 301.6330-1(i)(2), Q&A-I7, I11, *Proced. & Admin. Regs.*

Where a hearing has been timely requested in response to one of the types of notices set forth *supra*, the IRS Office of Appeals is directed to issue a notice of determination entitling the taxpayer to invoke the jurisdiction of this Court. In that context, section 6330(d)(1), I.R.C., specifically provides that the petition must be filed with the Tax Court within 30 days of the determination. The Court has no authority to extend this 30-day period. Weber v. Commissioner, 122 T.C. 258, 263 (2004); McCune v. Commissioner, 115 T.C. 114, 117-118 (2000). However, if the conditions of section 7502, I.R.C., are satisfied, a petition which is timely mailed may be treated as having been timely filed.

Other types of IRS notice which may form the basis for a petition to the Tax Court, likewise under statutorily prescribed parameters, are a Notice of Determination Concerning Your Request for Relief From Joint and Several Liability, a Notice of Final Determination Not To

Abate Interest, and a Determination of Worker Classification. No pertinent claims involving section 6015, 6404(h), or 7436, I.R.C., respectively, have been implicated here.<sup>1</sup>

Petitioners on May 2, 2018, filed a response in objection to respondent's motion, as supplemented. Therein, and in the earlier petition re-attached thereto, petitioners offered a litany of complaints regarding the processing of their various tax years by the IRS, but they neither cited nor attached any relevant notice of deficiency or determination that could provide the Court with jurisdiction over 2009, 2010, 2012, and 2013 in this case. Rather, petitioners continued to rely on the September 27, 2017, letters from the IRS Office of Appeals on their claims for abatement and/or refund of 2009, 2010, 2012, and 2013 taxes as sufficient to support the Court's jurisdiction in this proceeding. Specifically, they expressed their position as follows:

- 1) What the petitioners' [sic] are petitioning the court (Exhibit "A"), is a "September 27, 2017" "Decision" of the Appeals Office of the IRS located @401 West Peachtree Street, NW, Atlanta, GA 30308-3510 for tax periods 2009/2010 and 2012/2013, and line 2 of the Petition states, well within the time constraint of filing a "Petition to United States Tax Court".
- 2) The IRS has never issued a "Notice of Determination" to the Taxpayers on any of the 2009/2010 and 2012/2023 [sic] tax periods.

Hence, given the foregoing, the absence on the record provided of any pertinent notice to support an exercise of jurisdiction over 2009, 2010, 2012, and 2013 in this case as of the November 20, 2017, date the petition was filed becomes apparent. To the extent that the matter might be characterized as stemming from the February 5, 2014, notice of determination for 2009 and 2010, the November 20, 2017, petition would be untimely by a margin of over three and a half years. In the same vein, to the extent that the matter might be characterized as stemming from the 2014 and 2015 notices of deficiency for 2012 and 2013, the November 20, 2017, petition would be untimely by a margin of more than two years.

As to any other potential basis for an action herein for 2009, 2010, 2012, and 2013, the record is equally bereft of any evidence or suggestion that respondent has at any time issued any other relevant notice of deficiency or determination for these years that would confer jurisdiction

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<sup>1</sup> As to relief from joint and several liability, the sole indication in the record of a formal claim for innocent spouse relief or for an injured spouse allocation pertains to 2006, a year not in issue in this proceeding. To the extent that petitioners may also have checked the "Innocent Spouse Relief" box on their IRS Form 12153, Request for a Collection Due Process or Equivalent Hearing, for 2009 and 2010, the record does not otherwise suggest that such a claim was formalized or pursued during the administrative phase. As to interest abatement, the IRS Forms 843, Claim for Refund and Request for Abatement, attached to the petition show that petitioners were seeking abatement and/or refund of income taxes and did not raise any claim for refund of interest due to "IRS errors or delays", leaving the section of the forms for "Interest, penalties, and additions to tax" blank. The forms thus do not implicate any claim that would be subject to Tax Court review under section 6404(h), I.R.C.

on this Court. Conversely, the record at this juncture suggests that petitioners may have sought the assistance of the Court after having become frustrated with attempts to work administratively with the IRS but that the petition here was not based upon or instigated by a specific IRS notice expressly providing petitioners with the right to contest a particular IRS determination in this Court. Suffice it to say that no IRS communication supplied or mentioned by petitioners to date, including the September 27, 2017, letters from the IRS Office of Appeals, constitutes, or can substitute for, a notice of deficiency under section 6212, I.R.C., or a notice of determination issued pursuant to sections 6320 and/or 6330, I.R.C, regarding 2009, 2010, 2012, and 2013, or any other of the narrow class of specified determinations by the IRS that can open the door to the Tax Court, as of the date the petition was filed. Moreover, the expansive view of the Court's jurisdiction expressed in petitioners' response clearly exceeds the bounds of the limited jurisdiction detailed above. Absent a specific statutory grant to the Court to address a particular notice or scenario, the Court has no general jurisdiction to consider and redress complaints merely because they may pertain to taxes. Stated otherwise, the Court is simply without authority to consider the propriety of any IRS activity (or inactivity) in absence of a determination to petitioners within the meaning of the statutes discussed herein and a timely petition.

Additionally, the letters regarding disallowance of the claims for abatement and/or refund of taxes explained how and where litigation to dispute the conclusions reached may be commenced through the Federal court system. For example, the September 27, 2017, letter from the IRS Office of Appeals addressing the 2009, 2010, and 2012 years stated:

You may pursue this matter further by filing suit in either the United States District Court or the United States Court of Federal Claims. If you decide to do this, you must file the suit within two years from the date on the letter denying your claim, which the Kansas City IRS Campus mailed to you on October 18, 2016. However, if you signed a waiver of the notice of disallowance (Form 2297), the two-year period began on the date you filed that waiver.

Please note: Your two-year period has *NOT* been shortened or extended by our reconsideration of your claim.

The United States Tax Court is neither a United States District Court nor the United States Court of Federal Claims. See also McCormick v. Commissioner, 55 T.C. 138, 142 (1970). The Tax Court also has not been granted the ability to "transfer" cases or venue to other Federal Courts, and taxpayers need to file a separate petition or complaint directly with those courts.

Thus, in summary, the Court has no authority to extend that period provided by law for filing a petition "whatever the equities of a particular case may be and regardless of the cause for its not being filed within the required period." Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, since petitioners have failed to establish that the petition was mailed or filed within the required period with respect to earlier notices of deficiency and determination for 2009, 2010, 2012, and 2013 and have failed to establish the existence of any other determination by the IRS that could support this litigation for 2009, 2010, 2012, and 2013, this case must be dismissed for lack of jurisdiction. Congress has granted the Tax Court no authority to afford any remedy in

the circumstances evidenced by this proceeding, regardless of the merits of petitioners' complaints and the sympathetic nature of the scenario presented here.

The premises considered, it is

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction, as supplemented, is granted, and this case is dismissed for lack of jurisdiction.

**(Signed) Maurice B. Foley**  
**Chief Judge**

ENTERED: **JUN 15 2018**