

Background

On August 6, 2018, the Court received and filed a petition for the redetermination of income tax deficiencies.² The petition arrived at the Court in an envelope with the following return address: Management Concepts, PLC, 815 East Bethany Home Road, B112, Phoenix, Arizona 85014-2123. The envelope bore a U.S. Postal Service postmark date of August 2, 2018.

Attached to the petition is a copy of a notice of deficiency determining deficiencies in petitioners' Federal income tax for the taxable years 2014, 2015, and 2016. The tax deficiencies for the taxable years 2015 and 2016 were attributable primarily to the disallowance of partnership losses that petitioners apparently had claimed in connection with a purported investment in Clean Energy Systems (CES). The notice of deficiency attached to the petition inexplicably included two cover pages. The first cover page listed the date of mailing of the notice as May 9, 2018, and identified the last day to file a timely petition with the Court as August 7, 2018. The second cover page listed the date of mailing of the notice as November 17, 2017, and identified the last day to file a timely petition with the Court as February 15, 2018.

As indicated, respondent filed a motion to dismiss for lack of jurisdiction asserting that the petition was not timely filed. Attached to respondent's motion to dismiss is a Form 3877, also known as a certified mail list, showing that the notice of deficiency in question was mailed to petitioners by certified mail on November 17, 2017.

The Court conducted an evidentiary hearing in this case with the aim of developing a record that would explain why there were two cover pages with the notice of deficiency attached to the petition. Respondent duly served a subpoena on Carl Rex Olson, the principal officer of Management Concepts, PLC, directing him to appear and testify at the evidentiary hearing. Mr. Olson did not appear at the evidentiary hearing.

²The style of petitioners' signatures on the petition are very similar to the styles of the signatures on the petitions filed at docket Nos. 15435-18, 15436-18, and 15445-18, and they all appear to the Court to have been signed by the same person. There is no marking or disclosure, however, signaling that the petition was signed by a third party on petitioners' behalf.

Ryan Richardson appeared at the evidentiary hearing and testified about his experience with CES and his interactions with Mr. Olson. In 2015, at the recommendation of his tax preparer, Mr. Richardson invested in CES (which apparently operates as a partnership), and he and his spouse claimed a substantial loss on their joint Federal income tax return for that year. The IRS subsequently examined the Richardson's tax return and issued a so-called 30-day letter to them proposing an income tax deficiency attributable to the disallowance of the CES loss. At the recommendation of his tax preparer, Mr. Richardson met with Mr. Olson, CES's tax preparer, who assured Mr. Richardson that the IRS had erred in disallowing the CES loss and that he would take care of the matter. In this regard, Mr. Richardson executed a Form 2848, Power of Attorney and Declaration of Representative, appointing Mr. Olson as his attorney-in-fact for the taxable years 2014, 2015, and 2016.

The Richardsons subsequently received from the IRS a notice of deficiency for the taxable year 2015 dated January 31, 2018. Although Mr. Richardson forwarded a copy of the notice of deficiency to Mr. Olson and his tax return preparer on multiple occasions, and inquired a number of times whether a timely petition had been filed with the Court, he did not receive a response to his inquiries. In July 2018, after the period to file a timely petition with the Court had expired, the Richardsons received a notice and demand for payment from the IRS indicating that they owed tax and interest of approximately \$24,000 for the taxable year 2015.

In August 2018 the Richardsons received a notice from the Court that it had received a petition for redetermination from them and that their case had been assigned docket No. 15436-18. The Commissioner subsequently filed a motion to dismiss the petition for lack of jurisdiction on the ground the petition had not been timely filed. Like the present case, the Commissioner alleged in the motion to dismiss that the notice of deficiency attached to the petition had been altered to make it appear to have been timely filed. In the light of these allegations, Mr. Richardson hired an attorney to assist him in responding to the motion. The Richardsons subsequently filed a response to the Commissioner's motion asserting that they did not alter the dates on the notice of deficiency nor did they sign the petition. Mr. Richardson testified at the evidentiary hearing that he believes that Mr. Olson was responsible for altering the notice of deficiency attached to the petition in his case. In the end, the Court dismissed the case for lack of jurisdiction.

Discussion

The Court's jurisdiction to redetermine a deficiency depends upon the issuance of a valid notice of deficiency and a timely-filed petition. Rule 13(a), (c); see Monge v. Commissioner, 93 T.C. 22, 27 (1989); Normac, Inc. v. Commissioner, 90 T.C. 142, 147 (1988). Section 6212(a) expressly authorizes the Commissioner, after determining a deficiency, to send a notice of deficiency to the taxpayer's last known address by certified or registered mail. Pursuant to section 6213(a), the taxpayer has 90 days (or 150 days if the notice is addressed to a person outside of the United States) from the date that the notice of deficiency is mailed to file a petition with the Court for a redetermination of the deficiency. Petitioners, who seek to invoke the Court's jurisdiction, bear the burden of showing that the petition was timely filed. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975).

The record shows that the notice of deficiency in question was mailed to petitioners on November 17, 2017, and, therefore, the 90-day period for filing a petition with the Court expired on February 15, 2018. The petition was mailed to the Court on August 2, 2018, and was filed on August 6, 2018, well after the expiration of the 90-day statutory period. It follows that the petition was not timely filed and we are obliged to grant respondent's motion to dismiss for lack of jurisdiction.

As previously mentioned, although Mr. Olson was properly served with the Court's subpoena directing him to appear and testify at the evidentiary hearing, he apparently decided that it was best not to appear.³ The Court finds on this record that Mr. Olson was responsible for altering the notice of deficiency attached to the petition in this case and that he did so in a deliberate attempt to mislead the Court and the Commissioner. He engaged in similar misconduct in several other cases. His dishonest and misguided efforts have harmed the petitioners in this case and others and wasted the resources of the Court and the IRS. Should Mr. Olson

³Sec. 7456(a)(1) authorizes the Court to require by subpoena the attendance and testimony of witnesses from any place in the United States at any designated place of hearing. Considering all of the circumstances, including the necessary commitment of additional time and resources, the Court determined that it was not worthwhile to compel Mr. Olson to appear at the evidentiary hearing.

engage in similar conduct in the future, the Court would strongly consider referring him to the U.S. Department of Justice for prosecution.⁴

Upon due consideration and for cause, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction, filed October 2, 2018, is granted and this case is dismissed for lack of jurisdiction on the ground that the petition was not timely filed.

**(Signed) Daniel A. Guy, Jr.
Special Trial Judge**

ENTERED: **JUN 04 2019**

⁴18 U.S.C. sec. 1001 generally makes it a crime to knowingly and willfully submit to a court "any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry."