

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

BARBARA A. KUPERSMIT & HAROLD R.)
 KUPERSMIT,)
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 Petitioners,)
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 v.) Docket No. 17568-19.
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 COMMISSIONER OF INTERNAL REVENUE,)
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 Respondent)
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ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On November 7, 2019, respondent filed in the above-docketed case a Motion To Dismiss for Lack of Jurisdiction, on the ground that no notice of determination pursuant to section 6320 and/or 6330 of the Internal Revenue Code (I.R.C.), or notice of deficiency pursuant to sections 6212 and 6213, I.R.C., had been sent to petitioners with respect to the taxable year 2015, nor had respondent made any other determination with respect to such tax year that would confer jurisdiction on this Court, as of the date the petition herein was filed.

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, include a Notice of Final Determination Concerning Your Request for Relief From Joint and Several Liability, a Notice of Final Determination Not To Abate Interest, a Notice of Determination of Worker Classification, Notice of Certification of Your Seriously Delinquent Federal Tax Debt to the State Department, or a Notice of Final Determination Concerning Whistleblower Action. No pertinent claims involving section 6015, 6404(h), 7436, 7345, or 7623, I.R.C., respectively, have been implicated here.

Petitioners were served with copy of respondent's motion and on November 25, 2019, 2019, filed what would appear to be a largely inscrutable collection of random documents referring to various tax years. As such, petitioners did not deny the jurisdictional allegations set forth in respondent's motion, i.e., petitioners did not claim or show that the IRS had sent a notice of deficiency or determination or any other relevant notice for 2015.

Thus, 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 referenced by petitioners to date constitutes, or can substitute for, a notice of deficiency issued pursuant to 6212, I.R.C., a notice of determination issued pursuant to sections 6320 and/or 6330, I.R.C., 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 herein was filed. Instead, petitioners' apparently expansive view of the Court's authority fails to comport with the limited nature of the jurisdiction set forth in the statutory parameters set forth above.

In conclusion then, the Court on the present record lacks jurisdiction in this case to review any action (or inaction) by respondent in regard to petitioners' 2015 taxes (or any other year). 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.

Upon due consideration, it is

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

(Signed) Maurice B. Foley
Chief Judge

ENTERED: **DEC 16 2019**