

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

LAURENCE HARVEY EDELSON, )  
 ) CZ  
Petitioner, )  
 )  
v. ) Docket No. 8400-19.  
 )  
COMMISSIONER OF INTERNAL REVENUE, )  
 )  
Respondent )

**ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

This case is before us on the Commissioner’s motion to dismiss for lack of jurisdiction. Because we find that Mr. Edelson’s petition is untimely, we grant the Commissioner’s motion.

Background

The Commissioner issued Mr. Edelson a notice of deficiency for 2005 dated September 4, 2007. Within that notice the Commissioner explained that because Mr. Edelson failed to file a return, the Internal Revenue Service filed a substitute for return as authorized under section 6020(b). In May 2008, the Commissioner issued a collection notice to Mr. Edelson; in December 2008 the Commissioner issued Mr. Edelson a notice of determination.

The Commissioner sent another notice of deficiency to Mr. Edelson dated February 7, 2011, for 2008. Again, the notice explained that the IRS filed a substitute for return because Mr. Edelson did not file his return for 2008. The Commissioner issued a collection notice to Mr. Edelson in March 2012 and the parties agreed to an installment agreement in September 2018.

The Commissioner sent Mr. Edelson a third notice of deficiency, dated May 25, 2011, covering 2006 and 2007. In March 2012, the Commissioner issued a notice of federal tax lien for 2006 and 2007; in September 2018 the parties agreed to an installment agreement.

While residing in Nevada, Mr. Edelson filed a petition on May 23, 2019, alleging he never received a notice of deficiency for 2005-2008 and 2010-2017. He also states that he never received a notice of determination for 2005-2008 and 2010-2017. Mr. Edelson did not attach any documents with his petition.

In response, the Commissioner filed a motion to dismiss for lack of jurisdiction. In the motion the Commissioner claimed the IRS had issued notices of deficiency to Mr. Edelson for 2005-2008 as evidenced by certified transcripts, however, the IRS could not find copies of those notices. Nevertheless, the Commissioner asked us to dismiss for lack of jurisdiction for 2005-2008 on the ground that Mr. Edelson's petition was untimely. The Commissioner further asserts in the motion that this Court lacks jurisdiction for 2010-2017 because the Commissioner did not send notices of deficiency or notices of determination to Mr. Edelson for any of those years.

The Commissioner later supplemented his motion to dismiss. The supplement provided copies of the previously-missing notices of deficiency for 2005-2008. The supplement also reiterated the Commissioner's position that this Court should be dismissed for lack of jurisdiction for 2005-2008 because Mr. Edelson's petition was untimely.

### Discussion

We are a court of limited jurisdiction, and we may exercise that jurisdiction only to the extent authorized by Congress.<sup>1</sup> In a case seeking the redetermination of a deficiency, our jurisdiction depends, in part, on the Commissioner's issuing a valid notice of deficiency to the taxpayer.<sup>2</sup> The notice of deficiency is "the taxpayer's ticket to the Tax Court" because without it the Court may not review the asserted deficiency.<sup>3</sup>

---

<sup>1</sup>See sec. 7442; Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

<sup>2</sup>Rule 13(a); Frieling v. Commissioner, 81 T.C. 42, 46 (1983).

<sup>3</sup>Mulvania v. Commissioner, 81 T.C. 65, 67 (1983).

Tax Court jurisdiction in a deficiency case also depends on the taxpayer timely filing a petition with this Court.<sup>4</sup> To be timely, a taxpayer's petition must be filed with the Court within 90 days (or 150 days for taxpayers situated outside the United States) after the Commissioner mails the notice of deficiency.<sup>5</sup> This Court has no authority to extend the 90-day filing deadline.<sup>6</sup> Thus, if a taxpayer fails to file a petition within 90-days, the petition is untimely and must be dismissed.<sup>7</sup>

When determining whether the Commissioner properly issued a notice of deficiency, we can look to the presumption of official regularity.<sup>8</sup> Under the presumption of official regularity, courts presume that public officers properly discharged their official duties in the absence of clear evidence to the contrary.<sup>9</sup> If the presumption of regularity applies, we will presume the Commissioner properly mailed the notice of deficiency, unless there exists clear evidence to the contrary.<sup>10</sup> A taxpayer's mere claim that he did not receive the notice of deficiency is generally not sufficient to rebut the presumption of regularity.<sup>11</sup>

Mr. Edelson asserts he received no notices of deficiency for 2005-2008 and 2010-2017. Mr. Edelson is correct that he did not receive notices of deficiency for 2010-2017 because the Commissioner did not issue notices of deficiency to Mr. Edelson for those years. This Court therefore lacks jurisdiction over Mr. Edelson's 2010-2017 tax years because the Commissioner has not issued the notices necessary to confer jurisdiction. Thus, the Commissioner's motion to dismiss for lack of jurisdiction is granted as to those years.

The Commissioner mailed Mr. Edelson notices of deficiency for 2005-2008. Although Mr. Edelson claims he never received these notices, the Commissioner provided copies of them in his supplement to his motion to dismiss. The Commissioner is thus entitled to the presumption of official regularity that he sent

---

<sup>4</sup>Rule 13(c); Brown v. Commissioner, 78 T.C. 215, 220 (1982).

<sup>5</sup>Sec. 6213(a).

<sup>6</sup>Joannou v. Commissioner, 33 T.C. 868, 869 (1960).

<sup>7</sup>Malekzad v. Commissioner, 76 T.C. 963, 965-966 (1981); see sec. 6213(c).

<sup>8</sup>Klingenberg v. Commissioner, T.C. Memo. 2012-292, at \*12.

<sup>9</sup>United States v. Chem. Found., Inc., 272 U.S. 1, 14-15 (1926).

<sup>10</sup>Sego v. Commissioner, 114 T.C. 604, 611 (2000).

<sup>11</sup>Klingenberg v. Commissioner, at \*12.

the notices of deficiency to Mr. Edelson. Mr. Edelson failed to rebut this presumption.

Because the Commissioner issued notices of deficiency for 2005-2008, we must turn to whether he timely filed a petition with this Court. The Commissioner issued a notice of deficiency to Mr. Edelson for 2005 in September 2007, for 2006 and 2007 in May 2011, and for 2008 in February 2011. Mr. Edelson's May 2019 petition is well-outside the 90 days allowed to petition this Court from a notice of deficiency.

Mr. Edelson raises the defense that the notices of deficiency for 2005-2008 are void because the Commissioner did not sign the notices under the penalty of perjury "as is required by 26 U.S.C. §6065, 28 U.S.C. 1746 and the Equal Protection Clause of the United States Constitution (14th Amendment)." Section 6065 requires taxpayers to verify by written declaration that their returns are made under penalty of perjury.<sup>12</sup> This Court held that "section 6065 does not apply to notices issued by the Commissioner;" instead, it applies to documents originated by the taxpayer.<sup>13</sup> Neither 28 U.S.C. 1746 nor the 14th Amendment apply here.

### Conclusion

The Commissioner never mailed notices of deficiency to Mr. Edelson for 2010-2017, therefore we lack jurisdiction over Mr. Edelson's tax liability for those years. The Commissioner sent Mr. Edelson notices of deficiency for 2005-2008, however Mr. Edelson did not timely file his petition for those years. Therefore we lack jurisdiction over Mr. Edelson's taxes for 2005-2008. Accordingly, it is

ORDERED that the Commissioner's motion to dismiss for lack of jurisdiction filed September 27, 2019, as supplemented, is granted, and this case is dismissed for lack of jurisdiction.

**(Signed) Ronald L. Buch  
Judge**

Entered: **JAN 24 2020**

---

<sup>12</sup>Sec. 6065.

<sup>13</sup>Davis v. Commissioner, 115 T.C. 35, 42 (2000).