

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

PA

JESS YATES & MELISSA YATES,)	
)	
Petitioners,)	
)	
v.)	Docket No. 1991-20.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	
)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On January 30, 2020, a petition was filed to commence the above-docketed matter, alleging dispute with Internal Revenue Service (IRS) actions. The petition form itself referred neither to any particular notice of deficiency or determination nor to any particular taxable year. However, attached were extensive copies of IRS administrative materials and correspondence, as well as documents pertaining to prior Tax Court litigation, nearly all of which related to the 2006 tax year (with one apparent reference to 2013). Nonetheless, no notice of deficiency or determination from the IRS was included.

Subsequently, on March 25, 2020, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the general premise that, as of the date the petition herein was filed, no (new) 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 set forth circumstances indicating as grounds for dismissal: (1) That the petition was not filed within the time prescribed by section 6213(a) or 7502 of the Internal Revenue Code (I.R.C.) with respect to a deficiency for taxable year 2006, and that a notice of deficiency for such year had been the subject of a deficiency proceeding at Docket No. 3685-11; (2) that the petition was not timely filed within the statutory period prescribed by section 6330(d) or 7502, I.R.C., with respect to a notice of determination concerning collection action for taxable year 2006, and that a notice of determination for such year had been the subject of a collection proceeding at Docket No. 16473-15L; and (3) no other notice or determination to form the basis for a petition to this Court had been sent to petitioners with respect to the taxable year 2006 or any other tax year (including 2013) that would confer jurisdiction as of the time the petition herein was filed.

Review of the record for the prior litigation at Docket No. 3685-11 shows that the notice of deficiency had been dated November 17, 2010; the petition had been filed on February 14, 2011; a Decision had been entered March 28, 2013; and such decision had been appealed and

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was affirmed by the U.S. Court of Appeals for the Fourth Circuit in late 2013 (taking effect in early 2014). The decision had provided for a deficiency and accuracy-related penalty due from petitioners for 2006 in the amounts of \$70,912.00 and \$14,182.40, respectively. Likewise, review of the record for the prior litigation at Docket No. 16473-15L shows that the notices of determination had been dated May 27, 2015; the petition had been filed on June 26, 2015; an Order of Dismissal and Decision granting respondent's Motion for Summary Judgment as to 2006 had been entered August 15, 2016; and such disposition, too, had been appealed and affirmed by the U.S. Court of Appeals for the Fourth Circuit in 2017. The Order of Dismissal and Decision had sustained respondent's lien action for 2006.

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 a copy of respondent's motion and, on July 10, 2020, filed a response, with attachment. Therein, petitioners did not directly deny the jurisdictional allegations set forth in respondent's motion, i.e., petitioners did not show that the IRS had sent a notice of deficiency or determination or any other relevant notice for 2006 (or any year) that could support the petition filed January 30, 2020. To the contrary, petitioners offered a litany of complaints regarding how a property entrepreneur and the IRS had allegedly conspired to commit fraud on the Court in connection with a property transaction that was a subject of the prior case at Docket No. 3685-11. Attached to the response was a copy of a North Carolina general warranty deed. Petitioners did not, however, reference or attach any further notices that might support an exercise of jurisdiction here. Moreover, and most crucially, the focus on fraud on the Court was misplaced in any event. Even if present, fraud on the Court in a separate case would have no bearing whatsoever on the existence of jurisdiction in a entirely different and recently instigated Tax Court proceeding.

Hence, given the foregoing, the absence on the record provided of any pertinent notice to support an exercise of jurisdiction over 2006 or any year in this case as of the January 30, 2020, date the petition was filed becomes apparent. To the extent that the matter might be characterized as stemming from the November 17, 2010 notice of deficiency for 2006 previously petitioned at Docket No. 3685-11, the January 30, 2020, petition would be untimely by a margin

of nearly nine years. In the same vein, to the extent that the matter might be characterized as stemming from the May 27, 2015, notice of determination for 2006 previously petitioned at Docket No. 16473-15L, the January 30, 2020, petition would be untimely by a margin of more than four and a half years. As to any other potential basis for an action herein for 2006 or any year, 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 that would confer jurisdiction on this Court. Suffice it to say that no IRS communication supplied or mentioned by petitioners to date 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 2006 or any year, 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 the 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 in absence of a determination to petitioners within the meaning of the statutes discussed herein. Additionally, to reiterate the point made above, the potential existence of fraud on the Court in a separate case would have no bearing on the existence of jurisdiction in a new case.

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 the earlier notices of deficiency and determination for 2006 and have failed to establish the existence of any other determination by the IRS that could support this litigation for 2006 or any year, dismissal would follow under the usual jurisdictional proscriptions.

Moreover, aside from general parameters of timeliness or absence of appropriate notice, because petitioners previously challenged the notice of deficiency for 2006 at Docket No. 3685-11 and the notice of determination for 2006 at Docket No. 16473-15L, it likewise follows that such notices do not provide a basis for petitioners to invoke the Court's jurisdiction in this action, and allegations of fraud make no conceivable difference in that regard.

The premises considered, it is

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction, filed March 25, 2020, is granted, and this case is dismissed for lack of jurisdiction.

(Signed) Maurice B. Foley
Chief Judge

ENTERED: **JUL 29 2020**