UNITED STATES TAX COURT
WASHINGTON, DC 20217

JOHN M. CRIM,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 1638-15
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	
	)	

ORDER AND ORDER OF DISMISSAL FOR LACK OF JURISDICTION

Pending before the Court are (1) respondent's Motion To Dismiss For Lack Of Jurisdiction, filed March 26, 2015, and (2) petitioner's Motion To Conduct Jurisdictional Discovery, filed April 10, 2015, and supplemented November 2, 2015. Action on these motions was held in abeyance pending disposition of petitioner's Motion For Recusal Of Judge, filed February 24, 2015. Recently, the latter motion was denied by Order dated August 10, 2017. Accordingly, respondent's March 26, 2015 motion to dismiss and petitioner's April 10, 2015 discovery motion, as supplemented November 2, 2015, are now ripe for disposition.

At the time that the petition in this case was filed with the Court, petitioner had a mailing address in the State of California.

Background

On January 20, 2015, petitioner filed with the Court a "PETITION FOR REDETERMINATION OF RESPONDENT'S *DE FACTO* NOTICE OF DETERMINATION". (Italics in the original.) The first sentence of the preamble to the petition states as follows:

> COMES NOW, Petitioner, JOHN M. CRIM, by and through undersigned counsel, [and] hereby petitions for a determination that the Respondent Commissioner of Internal Revenue's rejection of Petitioner's Form 656-L Offer in Compromise based on doubt as to liability, as set forth by Respondent in his December 19, 2014 the [sic] letter rejecting Offer in Compromise ("Offer Rejection Letter"[1]), was incorrect as a matter of law and hence an abuse of discretion.[2]
>
> ---
>
> [1] This Court has jurisdiction because the Offer Rejection Letter "reflects a 'determination' sufficient to invoke the Court's jurisdiction." *Craig v. C.I.R.*, 119 T.C. 252, 257 (2002).
> [2] *See Koon v. United States*, 518 U.S. 81, 100 (1996) (errors of law always result in an abuse of discretion).

(Footnotes in the original.)

Paragraph 2 of the petition describes the December 19, 2014 offer rejection letter, and a copy of the letter is attached as an exhibit to the petition.[1] The letter was executed by a tax examiner in respondent's Holtsville, NY service center, and the first two paragraphs state as follows:

> We have closed our file on your offer and are returning your Form 656-L, Offer in Compromise (Doubt as to Liability) for the following reason(s):
>
> We cannot consider an Offer in Compromise based on doubt as to liability if the liability you seek to compromise has been finally determined by the Tax Court, other courts or by the Commissioner's Final Closing Agreement.

The December 19, 2014 offer rejection letter does not describe the offer by type of liability(ies), amount(s), taxable year(s), or otherwise, and a copy of the offer itself is not in the record. However, paragraph 3 of the petition alleges as follows: "The amount at issue is $17,242,806.57 * * * [and] arises out of a restitution order entered against Petitioner in the United States District Court for

---

[1] The letter is erroneously dated December 19, 201<u>5</u>. There is no dispute that the year should be 201<u>4</u>.

the Eastern District of Pennsylvania in 2008", which order relates to petitioner's criminal conviction for conspiracy to defraud the United States under 18 U.S.C. sec. 371 and interference with the administration of internal revenue laws under 26 U.S.C. sec. 7212(a). See United States v. Crim, 553 F. App'x 170 (3d Cir. 2014). The following three paragraphs from the opinion of the Court of Appeals in that case, which address one aspect of petitioner's appeal from that part of the sentence imposed by the District Court regarding restitution, serve to illuminate (at least in part) petitioner's theory regarding the Tax Court's jurisdiction in the instant case:

> Crim claims his sentence violated the Ex Post Facto Clause of the United States Constitution * * * . * * *
>
> After Crim's conviction, Congress passed the Firearm Excise Tax Improvement Act of 2010. Among other things, the law authorizes the IRS to use its administrative powers to collect on criminal restitution when the Government is the victim by treating the criminal restitution as a tax. *See* 26 U.S.C. § 6201(a)(4). Before 2010, the IRS could receive restitution payments like any other victim entitled to criminal restitution but it lacked the authority to actively collect restitution. Because the IRS lacked this authority when Crim participated in the conspiracy, he claims this subsection is an unconstitutional ex post facto law as applied to him.
>
> Crim's argument is best described as contingent and premature, touching as it does on an enforcement mechanism that the IRS has not yet employed to collect the restitution Crim owes to the United States. If the IRS chooses to use this power against Crim, he may challenge its legality at that time. Nothing in the restitution order before us implicates the IRS's collection authority under 26 U.S.C. § 6201(a)(4). [Emphasis added; see also I.R.C. sec. 6213(b)(5), regarding certain orders of criminal restitution.]

United States v. Crim, 553 F. App'x at 172. For a further unsuccessful challenge by petitioner, see United States v. Crim, 665 F. App'x. 144 (3d Cir. 2016).

On March 26, 2015, respondent filed his Motion To Dismiss For Lack Of Jurisdiction. In the preamble to his motion, respondent moves to dismiss this case "upon the ground that no statutory notice of determination has been sent to petitioner * * * nor has respondent made any other determination * * * that would confer jurisdiction on this Court." Respondent argues in his motion that "The Letter attached to the petition does not constitute [a] notice that would confer jurisdiction on this Court." Respondent goes on to represent in his motion that neither a notice of determination, as described in I.R.C. section 6320 or 6330, nor any other jurisdictionally-relevant notice has been sent to petitioner.[2]

On April 10, 2015, petitioner filed a Response In Opposition to respondent's motion to dismiss. Notably, petitioner did not attach as an exhibit to his response a copy of any notice of determination, as described in I.R.C. section 6320 or 6330, or any other jurisdictionally-relevant notice reflecting a determination by the Commissioner. Rather, petitioner argues that "when the Third Circuit stated that Crim can raise his *ex post facto* challenge in the context of IRS collections, such a statement vested Crim with certain rights, *viz.* to be able to challenge the criminal restitution in the collections context with the IRS."

Also on April 10, 2015, petitioner filed his Motion To Conduct Jurisdictional Discovery. In it petitioner continues to make clear his desire to challenge the existence and/or amount of restitution ordered by the District Court in his criminal proceeding.

---

[2] Obviously, representations made by respondent in his March 26, 2015 motion speak to what has occurred (or what has not occurred) as of that time. Insofar as future events are concerned, the Court notes that on August 4, 2017, petitioner commenced a case at dkt. No. 16574-17L by filing a "PETITION FOR REDETERMINATION OF NOTICE OF DETERMINATION" and attached as an exhibit to that petition a copy of a "NOTICE OF DETERMINATION Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code" dated July 25, 2017, which notice was issued by the Commissioner's Appeals Office in Tampa, Florida. The July 25, 2017 notice of determination served to sustain a proposed levy in respect of (1) an income tax liability for 2014 and (2) I.R.C. section 6700(a) penalties for 1999 through 2003. At the time that the petition at dkt. No. 16574-17L was filed with the Court, petitioner's mailing address had changed from California to Malta.

Discussion

A. Respondent's Motion To Dismiss For Lack Of Jurisdiction

The Tax Court is a court of limited jurisdiction. See I.R.C. sec. 7442. Accordingly, the Court may exercise jurisdiction only to the extent expressly authorized by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In addition, jurisdiction must be proven affirmatively, and a party invoking our jurisdiction bears the burden of proving that the Court has jurisdiction over the party's case. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960); National Comm. to Secure Justice v. Commissioner, 27 T.C. 837, 839 (1957). In order to meet this burden, the party must establish affirmatively all facts giving rise to the Court's jurisdiction. See Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. at 180; Consol. Cos. v. Commissioner, 15 B.T.A. 645, 651 (1929).

This Court has jurisdiction in several different types of actions that may be commenced by individuals. See e.g., secs. 6213(a) (actions for redetermination of deficiency), 6015(e) (actions for determination of relief from joint and several liability on a joint return (i.e., so-called innocent spouse)), 6404(h) (actions for interest abatement). In this case petitioner appears to invoke the Court's collection review jurisdiction under I.R.C. sec. 6330(d)(1) relating to liens (see I.R.C. sec. 6320(c)) and levies (see I.R.C. sec. 6330). In that regard petitioner styled his petition as "PETITION FOR REDETERMINATION OF RESPONDENT'S *DE FACTO* NOTICE OF DETERMINATION" and, citing Craig v. Commissioner, 119 T.C. 252 (2002), alleges that "This Court has jurisdiction because the Offer Rejection Letter "reflects a 'determination' sufficient to invoke the Court's jurisdiction."

In a collection review action, this Court's jurisdiction under I.R.C. sections 6320 and 6330 depends, in part, on the issuance of a notice of determination by respondent's Appeals Office after the taxpayer has requested an administrative hearing following the issuance by respondent's collection division of either a final notice of intent to levy, see I.R.C. sec. 6330(a), or a notice of filing of Federal tax lien, see I.R.C. sec. 6320(a). See Sarrell v. Commissioner, 117 T.C. 122, 125 (2001); Moorhous v. Commissioner, 116 T.C. 263, 269 (2001); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); see also Rule 330(b), Tax Court Rules of Practice and Procedure.

In the present case petitioner, purporting to invoke the Court's collection review jurisdiction, "petitions for a determination" that the "rejection of Petitioner's Form 656-L[,] Offer in Compromise based on doubt as to liability" pursuant to the December 19, 2014 offer rejection letter was "incorrect as a matter of law and hence an abuse of discretion." However, this Court lacks jurisdiction in this matter, because the letter on which petitioner relies is not a notice of determination within the meaning of I.R.C. section 6320 or 6330.

The letter is not a notice of determination within the meaning of sections 6320 and 6330 for several reasons. First, the December 19, 2014 offer rejection letter was not issued by respondent's Appeals Office but rather was sent by a tax examiner in a service center. See I.R.C. secs. 6320(b)(1), 6330(b)(1) and (d)(3), vesting in respondent's Appeals Office jurisdiction to conduct hearings and make determinations prescribed by I.R.C. sections 6320 and 6330. See I.R.C. sec. 6320(c). Second, the December 19, 2014 letter did nothing other than reject petitioner's offer-in-compromise. Unlike a notice of determination contemplated by I.R.C. section 6320 or 6330, the letter did not purport to sustain a notice of Federal tax lien or a proposed levy. Third, there is nothing in the record to suggest that respondent's Appeals Office would have had reason to issue a notice of determination at the conclusion of an administrative appeal because, at least at all times relevant to the present case, petitioner had not requested a so-called CDP (collection due process) hearing in respect of a final notice of intent to levy (see I.R.C. sec. 6330(a)(3)(B) or a notice of lien filing (see I.R.C. sec. 6320(a)(3)(B)). See generally secs. 301.6320-1 and 301.6330-1, Proced. & Admin. Regs. Fourth, there is nothing in the record to suggest that respondent's collection division had issued a proposed levy or filed a notice of Federal tax lien in respect of the restitution award that petitioner seeks to challenge. In short, the prerequisites for the exercise of this Court's collection review jurisdiction are not present in the present case.[3]

Petitioner seeks to overcome these problems by invoking Craig v. Commissioner, 119 T.C. 252 (2002). In that case the Commissioner mailed to the taxpayer a final notice of intent to levy in respect of outstanding income tax liabilities for several taxable years. The taxpayer timely, and unequivocally, requested an administrative hearing under I.R.C. section 6330 (i.e., a so-called

[3] As previously mentioned, petitioner recently invoked the Court's collection review jurisdiction by commencing a case at dkt. No. 16574-17L. See supra note 2. In that docket petitioner attached to the petition a copy of a notice of determination that had been issued by the Commissioner's Appeals Office in Tampa, Florida, sustaining a proposed levy.

collection due process, or CDP hearing) by mailing a letter to respondent. Enclosed with the letter were two Forms 12153, Request For A Collection Due Process Hearing. The taxpayer executed the letter but not the Forms 12153. By the time that the forms had been returned to the taxpayer by the service center for his signature and then executed and returned by him, more than 30 days had past since the mailing of the final notice of intent to levy. Respondent's Appeals Office concluded, mistakenly, that the taxpayer's request for a CDP hearing was untimely and therefore did not conduct a CDP hearing but rather conducted a so-called equivalent hearing. See generally secs. 301.6320-1(i) and 301.6330-1(i), Proced. & Admin. Regs.[4] Ultimately, the Appeals Office determined that the proposed levy should be sustained and issued a Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330 (decision letter). The decision letter, unlike a Notice Of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 that should have been issued, stated that the taxpayer did not have the right to judicial review. Nevertheless, the taxpayer invoked the Court's collection review jurisdiction by timely filing a petition with this Court.

In Craig v. Commissioner, 119 T.C. at 256, the Court held that I.R.C. section 6330(d)(1) is the specific provision that governs the Court's jurisdiction to review a proposed collection action and that jurisdiction under that section depends on the issuance of a valid notice of determination and a timely petition for review. The Court went on to state that "The fact that [the Commissioner] held with [the taxpayer] a hearing labeled as an equivalent hearing, rather than a hearing labeled as a [CDP] Hearing, and that [the Commissioner] issued to [the taxpayer] a document labeled as a decision letter, rather than a document labeled as a notice of determination, does not erase the fact that [the taxpayer] received a 'determination' within the meaning of section 6330(d)(1)." Craig v. Commissioner, 119 T.C. at 259. The Court thus held that under the particular facts and circumstances of that case, "where Appeals issued the decision letter to [the taxpayer] in response to his timely request for a [CDP] Hearing, we conclude that the 'decision' reflected in the

---

[4] Sec. 301.6330-1(i)(1), Proced. & Admin. Regs., provides as follows:

> A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an "equivalent hearing." The equivalent hearing will be held by Appeals and generally will follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

decision letter issued to [the taxpayer] is a 'determination' for purposes of section 6330(d)(1) * * * [and] that we have jurisdiction to decide this case." Id.

Craig is clearly distinguishable and has no application to the present case. In the present case respondent's Appeals Office issued neither a notice of determination nor a decision letter. Indeed, respondent's Appeals Office played no role whatsoever. Rather, it was a tax examiner in one of respondent's service centers that issued the December 19, 2014 offer rejection letter. Therefore, respondent's Appeals Office had no reason to make any determination pursuant to I.R.C. section 6320 or 6330 and thus no reason to issue a notice of determination, or for that matter a decision letter, because the rejection of an offer-in-compromise, in and of itself, is not a matter that invokes the procedures mandated by I.R.C. sections 6320 and 6330. In contrast, in Craig the Commissioner's collection division issued a final notice of intent to levy and the taxpayer timely filed a request for an administrative (i.e., CDP) hearing. Accordingly, the Commissioner's Appeals Office was obliged to conduct such a hearing to determine whether to sustain the proposed levy, and to issue a notice of determination pursuant to the procedures mandated by I.R.C. section 6330.

Finally, petitioner seems to imply that this Court has jurisdiction in the present case as a result of the statement by the Court of Appeals that "If the IRS chooses to use this power against Crim, he may challenge its legality at that time." United States v. Crim, 553 F. App'x at 172, as quoted above in context on page 3. The Court of Appeals' statement that petitioner "may challenge" does not suggest how, in what manner, at what time, or in what court petitioner might pursue such a challenge and does not confer jurisdiction on this Court in the absence of a statutory provision conferring this Court's jurisdiction.

B. Petitioner's Motion To Conduct Jurisdictional Discovery

The Court shall deny petitioner's discovery motion. As a matter of law, and as previously discussed, the tax examiner's December 19, 2014 offer rejection letter is not a notice of determination within the meaning of I.R.C. section 6320 or 6330. Moreover, and also as previously discussed, petitioner's reliance on Craig v. Commissioner, 119 T.C. 252 (2002), is misplaced. Thus, discovery would serve no useful purpose. Further, discovery would be inappropriate because petitioner appears to want to engage in discovery in order to further his agenda of challenging the award (amount and/or terms) of criminal restitution that was ordered by the District Court. Given this Court's lack of jurisdiction in the present case, that is something that petitioner may not do. Whether he may do so at some future time, in some other context, or in some other court is a matter that this Court need not, and does not, address.

In order to give effect to the foregoing, it is hereby

ORDERED that petitioner's Motion To Conduct Jurisdictional Discovery, filed April 10, 2015, and supplemented November 2, 2015, is denied. It is further

ORDERED that respondent's Motion To Dismiss For Lack Of Jurisdiction, filed March 26, 2015, is granted, and this case is dismissed on the stated ground for want of a jurisdictionally-relevant notice.

(Signed) L. Paige Marvel
Chief Judge

ENTERED: **SEP 05 2017**