

UNITED STATES TAX COURT
WASHINGTON, DC 20217

VICTOR ROY ZIEGLER,)
) **SD**
)
 Petitioner)
)
 v.) Docket No. 26774-12 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)
)

ORDER AND DECISION

We grant the motion for summary judgment filed by the respondent (the “IRS”) on July 3, 2014.

1. Factual background.

The following facts are taken from the materials submitted by the IRS in support of its motion for summary judgment.

On either June 10, 2011, or June 13, 2011, the IRS mailed Ziegler a CDP notice notifying him it intended to collect his income-tax liability for 2009 by levy. The CDP notice entitled him to request a collection-review hearing, also known as a CDP hearing. The notice stated that Ziegler had to “return” a form requesting a CDP hearing “within 30 days from the date of this letter.” The post office stamped the date June 10, 2011 on its certified-mailing records¹ to indicate that the CDP notice was mailed by the IRS on June 10, 2011. However, the date June 13, 2011 appears on the first page of the CDP notice next to the heading “Notice Date”. In its summary-judgment papers, the IRS hypothesizes that it may have mailed the CDP notice on June 13, 2011, rather than June 10, 2011, and that the above-referenced date stamp may have erroneously reflected a date of June 10, 2011 because the post office failed to reset its date stamp to June 13, 2011.

¹The CDP notice was mailed by certified mail.

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Around noon, June 14, 2011, the post office delivered the CDP notice to Ziegler's address.

On July 14, 2011, Ziegler mailed a request for a CDP hearing to the IRS. The postmark on the envelope was July 14, 2011.

On either July 19, 2011, or July 20, 2011, the IRS received Ziegler's request for a CDP hearing. An IRS employee wrote on the request that the "IRS Received Date" was July 19, 2011. However, the request was stamped "RECEIVED" on July 20, 2011.

The IRS Appeals Office exchanged correspondence with Ziegler and had a telephone conversation with him.

By notice dated September 28, 2012, the IRS issued a notice of determination sustaining the proposed levy action.

2. Procedural history.

On October 26, 2012, Ziegler filed a petition challenging the notice of determination.

On February 6, 2013, the IRS filed a motion to dismiss the case for lack of jurisdiction. The motion asserted that the 30-day period for requesting a CDP hearing began on June 14, 2011, that the last day of that period was July 13, 2011, and that Ziegler's request for a CDP hearing was untimely. The Court denied the motion because it found that the facts of this case were similar to Kim v. Commissioner, T.C. Memo. 2005-96, 89 T.C.M. (CCH) 1123 (2005). In Kim, the Court held that it had jurisdiction over a case, even though the taxpayer had failed to timely request a CDP hearing, because the Appeals Office had nonetheless issued a notice of determination. 89 T.C.M. (CCH) at 1126. The Court's Order denying the IRS's motion to dismiss for lack of jurisdiction did not reach the issue of whether the lateness of Ziegler's request for a CDP hearing warranted denying him relief.

3. Analysis.

Summary judgment is a procedure designed to expedite litigation and avoid unnecessary, time-consuming, and expensive trials. Fla. Peach Corp. v.

Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues presented:

if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law.

Tax Court Rule of Practice & Procedure 121(a) and (b); see Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994); Zaentz v. Commissioner, 90 T.C. 753, 754 (1988). The moving party bears the burden of proving that there is no genuine issue of material fact, and factual inferences will be made in a manner most favorable to the party opposing summary judgment, in this case, Ziegler. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985).

Section 6330² requires a taxpayer to timely request a CDP hearing. Sec. 6330(a)(3)(B); sec. 301.6330-1(c)(1) and (2), Q&A-C3, C5-C7, Proced. & Admin. Regs.; see also Craig v. Commissioner, 119 T.C. 252, 257 (2002); Kennedy v. Commissioner, 116 T.C. 255, 262 (2001); Offiler v. Commissioner, 114 T.C. 492, 497 (2001). A taxpayer must request a CDP hearing “during the 30-day period that commences the day after the date of the CDP notice.” Id. Sec. 301.6330-1(c)(1), Proced. & Admin. Regs. Section 6330 does not authorize the IRS to lengthen or shorten the 30-day period for requesting a section 6330 hearing. Moorhous v. Commissioner, 116 T.C. 263, 270 n.5 (2001); Kennedy v. Commissioner, supra at 262. A request for a CDP hearing that is received by the IRS during the 30-day period is timely. See id. A request mailed by the taxpayer during the 30-day period is also timely. Sec. 301.6330-1(c)(2), Q&A-C4 (section 7502 applies to the timeliness of the request); section 7502 (a document that is timely mailed is considered timely).

Ziegler mailed his request for a hearing on July 14, 2011. Therefore, the question to be resolved is whether this date--July 14, 2011--was during the 30-day period commencing the day after the “date of the CDP notice.” This raises the question of what “the date of the CDP notice” means. Is it the date a notice is

²All section references are to the Internal Revenue Code of 1986, as amended, unless otherwise indicated.

mailed by the IRS? Is it the date appearing on the face of the notice? Is it the date the notice is received by the taxpayer?

The IRS's motion for summary judgment assumes that the "date of the CDP notice" is the date written on the face of the CDP notice. However, regulations may be read to suggest that the "date of the CDP notice" is the date the IRS mailed the CDP notice. Sec. 301.6330-1(c)(3) Q&A Ex. 1, Proced. & Admin. Regs. Ziegler argues that the "date of the CDP notice" is the date the taxpayer received the CDP notice.

Ziegler's theory that the "date of the CDP notice" is the date of receipt is contrary to the regulations and is not compelled by the language of the Internal Revenue Code. See sec. 301.6330-1(c)(3) Q&A Ex. 1, Proced. & Admin. Regs. We will therefore not consider it. We will consider (for the purpose of argument) the possibility that the "date of the CDP notice" is its mailing date and the possibility that the "date of the CDP notice" is the date appearing on the face of the notice.

Suppose that the "date of the CDP notice" is its mailing date. The IRS mailed the CDP notice to Ziegler on either June 10, 2011 or June 13, 2011. If the mailing date was June 10, 2011, then the 30-day period for Ziegler to make a request would be June 11 to July 10, 2011. If the mailing date was June 13, 2011, then the 30-day period would be June 14 to July 13, 2011. Either way, Ziegler's July 14th request would have been made after the 30-day period.

Suppose instead that the "date of the CDP notice" is the date appearing on the face of the notice. The CDP notice received by Ziegler was dated June 13, 2011. Therefore, the 30-day period for Ziegler to make his request would be June 14 to July 13, 2011. Ziegler's July 14th request would have been made after the 30-day period.

The undisputed relevant facts establish that Ziegler failed to timely request a CDP hearing within the 30-day period. Because Ziegler did not timely request a CDP hearing, Ziegler was not entitled to such a hearing. Therefore we shall grant the IRS's motion for summary judgment. See Kim v. Commissioner, T.C. Memo 2005-96 (denying IRS's motion to dismiss for lack of jurisdiction but granting summary judgment to the IRS).

Given the foregoing, it is

ORDERED that respondent's July 3, 2014 motion for summary judgment is granted; and it is

ORDERED and DECIDED that respondent may proceed with the collection of petitioner's federal income tax liabilities for the taxable year 2009, as described in the Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated September 28, 2012.

**(Signed) Richard T. Morrison
Judge**

ENTERED: **NOV 05 2014**