

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ALAN M. BERKUN,)	
)	
Petitioner,)	
)	
v.)	Docket No. 18437-15 L
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This section 6330(d)¹ case is before the Court upon respondent's Motion to Dismiss for Lack of Jurisdiction, filed September 1, 2015. Respondent's motion is based upon the ground that petitioner has not been issued a notice of determination under sections 6320 and/or 6330 for 2004. Petitioner's objections to respondent's motion are embodied in his response, filed November 17, 2015. Respondent replied to petitioner's objection in a response filed December 21, 2015, as supplemented on January 12, 2016.

The facts relevant to the disposition of respondent's motion taken from the above-referenced submissions and the First Stipulation of Facts, filed March 18, 2016, are summarized as follows.

On November 3, 2014, respondent sent to petitioner a Final Notice of Intent to Levy and Notice of Your Right to a Hearing (levy notice) with respect to petitioner's unpaid restitution based assessment for 2004 (underlying liability). Respondent sent the levy notice by certified mail to petitioner at 9121 Equus Circle, Boynton Beach, FL 33472-4315 (9121 Equus Circle address). This address was reflected on petitioner's 2012 and 2013 Federal income tax returns filed with the Internal Revenue Service (IRS) on April 15, 2013, and April 15, 2014, respectively. Petitioner's 2013 return was filed with the IRS more than six months before the levy notice was mailed.

¹Section references are to the Internal Revenue Code of 1986, as amended.

On February 20, 2015, respondent received a Form 12153, Request for a Collection Due Process or Equivalent Hearing. Taking into account the date that the levy notice was sent to petitioner, the IRS Appeals Officer to whom the case was assigned determined that petitioner submitted his Form 12153 beyond the 30-day period prescribed under section 6330(a)(3)(B). The Appeals officer held an equivalent hearing and on June 18, 2015, respondent issued to petitioner a Decision Letter on Equivalent Hearing Under Internal Revenue Code Sections 6320 and/or 6330 (decision letter). A copy of the decision letter is attached to the petition.

According to respondent, the foregoing set of circumstances does not give rise to the Court's jurisdiction over the collection action proposed in the decision letter. For the following reasons, we agree with respondent.

The Tax Court is a court of limited jurisdiction and may exercise jurisdiction only to the extent expressly authorized by Congress. Naftel v. Commissioner, 85 T.C. 527, 529 (1985); Breman v. Commissioner, 66 T.C. 61, 66 (1976). The Court's jurisdiction to review certain collection activity by the IRS under sections 6320 and 6330 depends on the issuance of a valid notice of determination and the timely filing of a petition with this Court for review. Orum v. Commissioner, 123 T.C. 1 (2004), aff'd, 412 F.3d 819 (7th Cir. 2005); 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). Respondent did not, within the meaning of sections 6320 or 6330, issue a notice of determination with respect to the underlying liability. The decision letter issued following an equivalent hearing is not a notice of determination and is insufficient to invoke the Court's jurisdiction under sections 6320 or 6330. Wilson v. Commissioner, 137 T.C. 47 (2008); Kennedy v. Commissioner, 116 T.C. 255, 263 (2001); Cf. Craig v. Commissioner, 119 T.C. 252 (2002).

According to petitioner, respondent did not mail the levy notice to his last known address and therefore the notice is invalid. Petitioner contends that in a letter dated January 19, 2013 (January 19 letter), he "provided respondent with clear notice that any notices related to his case were to be sent to him at" Miami Federal Prisoner Camp, P.O. Box 77980, Miami, Florida 33177-9800.

Generally, a levy notice properly sent to the taxpayer's last known address by certified or registered mail is sufficient to start the 30-day period within which an Appeals hearing may be requested, and actual receipt of such levy notice is not a prerequisite to the validity of that notice. See sec. 301.6330-1(a)(3), Q&A-A9,

Proced. & Admin. Regs.; see also Mannella v. Commissioner, 132 T.C. 196, 199-200 (2009), rev'd on other grounds, 631 F.3d 114 (3d Cir. 2011). Neither the Internal Revenue Code nor the regulations promulgated thereunder define the phrase “last known address”. However, this Court has defined the phrase to mean “the taxpayer’s last permanent address or legal residence known by the Commissioner, or the last known temporary address of a definite duration to which the taxpayer has directed the Commissioner to send all communications during such period.” Brown v. Commissioner, 78 T.C. 215, 218 (1982). In general, that address will be the address reflected on the taxpayer’s most recently filed Federal income tax return, absent clear and concise notification of a different address. See United States v. Zolla, 724 F.2d 808, 810 (9th Cir. 1984); Abeles v. Commissioner, 91 T.C. 1019, 1035 (1980); Alta Sierra Vista, Inc. v. Commissioner, 62 T.C. 367, 374 (1974), aff'd without published opinion, 538 F.2d 334 (9th Cir. 1976). The taxpayer has the burden of proving that a notice sent by respondent was not sent to the taxpayer’s last known address. See Yusko v. Commissioner, 89 T.C. 806, 808 (1987). If the levy notice had been issued between January 19 and April 15, 2014, then we might be required to decide whether that letter constituted “clear and concise” notice of petitioner’s last known address, a point in dispute between the parties. For the following reasons, however, we need not resolve that dispute.

The record contains a copy of the January 19 letter and petitioner’s 2013 Federal income tax return, which was the most recently filed Federal income tax return as of the date the levy notice was issued and sent to petitioner. That return reflects the 9121 Equus Circle address as petitioner’s address. The IRS received and filed petitioner’s 2013 return on or about April 15, 2014, approximately three months after petitioner sent the January 19 letter. Petitioner did not provide the IRS with clear and concise notification of a different address between the time his 2013 return was filed and the levy notice was issued. Accordingly, the 9121 Equus Circle address was petitioner’s last known address and, contrary to petitioner’s argument, the levy notice was sent to petitioner’s last known address. See Abeles v. Commissioner, 91 T.C. at 1035.

The record further establishes that petitioner’s hearing request in response to the levy notice was not timely. See sec. 6330(a)(3)(B); sec. 301.6330-1(b)(1), Proced. & Admin. Regs. That being so, respondent properly afforded petitioner an equivalent hearing. See sec. 301.6330-1(c)(2), Q&A-C7, Proced. & Admin. Regs.; sec. 301.6330-1(i), Proced. & Admin. Regs. It follows that this case must be dismissed for lack of jurisdiction on the ground that no notice of determination under section 6330 has been issued to petitioner with respect to the underlying

liability. See Wilson v. Commissioner, 137 T.C. 47; Moorhous v. Commissioner, 116 T.C. 263.

For the foregoing reasons, it is

ORDERED that respondent's motion is granted, and this case is dismissed for lack of jurisdiction.

**(Signed) Lewis R. Carluzzo
Special Trial Judge**

ENTERED: **APR 15 2016**