

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

NANCY M. RUBEL A.K.A. NANCY M.)
 ZAWADZKI,)
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 Petitioner,)
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 v.) Docket No. 9183-16.
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 COMMISSIONER OF INTERNAL REVENUE,)
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 Respondent)
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ORDER OF DISMISSAL FOR LACK OF JURISDICTION

The petition underlying this proceeding was filed on April 20, 2016, and alleged dispute with a notice of determination concerning collection action. The years 2005, 2006, 2007, and 2008 were cited in the petition as the years in issue. However, the sole notices from the Internal Revenue Service (IRS) attached to the petition were partial copies of notices of final determination concerning requests for relief from joint and several liability for the subject years, dated January 4 and January 13, 2016.

Subsequently, on June 9, 2016, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the grounds: (1) That the petition was not filed within the time prescribed by section 6015(e) or 7502 of the Internal Revenue Code (I.R.C.) with respect to notices of final determination concerning requests relief from joint and several liability for taxable years 2005, 2006, 2007, and 2008; and (2) no notice of determination under section 6320 or 6330, I.R.C., to form the basis for a petition to this Court had been sent to petitioner with respect to taxable years 2005, 2006, 2007, and 2008, nor had respondent made any other determination with respect to petitioner’s such tax years that would confer jurisdiction on the Court as of the time the petition herein was filed. Attached to the motion were complete copies of notices of final determination concerning relief from joint and several liability for taxable years 2006, 2007, and 2008, dated January 4, 2016; a notice of final determination concerning relief from joint and several liability for taxable year 2005, dated January 13, 2016; and the corresponding certified mail lists, as evidence of the fact that such notices were sent to petitioner by certified mail on the stated dates. Also attached was a copy of a Letter 5188C, dated March 3, 2016, acknowledging petitioner’s request for reconsideration of the prior denials of section 6015, I.R.C., relief for 2005, 2006,

1007, and 2008 but still proposing to deny relief in full. The Letter 5188C further advised that the reconsideration did not extend the time to file a petition with the Tax Court with respect to the earlier denials, but it stated erroneously that such period would end on April 19, 2016.

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 based upon a notice of determination that disallows a request for relief from joint and several liability on a joint return, the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. Sec. 6015(e), I.R.C.; Rule 320(b), Tax Court Rules of Practice and Procedure. In this regard, section 6015(e)(1), I.R.C., specifically provides that the petition must be filed with the Tax Court within 90 days of the determination. The Court has no authority to extend this 90-day period. 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. As pertinent here, jurisdiction under section 6015(e), I.R.C., is likewise predicated in part on issuance of a final determination by the IRS under that section or the failure by the IRS to issue such a determination within 6 months of a request for relief from joint and several liability on a joint return. Sec. 6015(e)(1)(A), I.R.C.

Similarly, this Court's jurisdiction in a case seeking review of a determination 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 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.

Petitioner was served with a copy of respondent's motion to dismiss and, on July 5, 2016, filed an opposition. Therein, petitioner offered two principal arguments. The opposition first took the position that March 3, 2016, should be considered a final determination regarding section 6015, I.R.C., relief subject to judicial review before this Court. In the alternative, petitioner contended that equitable estoppel should be applied so as to allow petitioner to rely on the April 19, 2016, deadline stated in March 3, 2016, letter.

On this record, then, the Court considers in turn whether jurisdiction has been established with respect either to a section 6015(e), I.R.C., proceeding or to a collection proceeding for 2005, 2006, 2007, and 2008. Regarding the final notices concerning relief from joint and several liability dated January 4 and 13, 2016, and as previously noted, the petition herein was filed with the Court on April 20, 2016, which date is 107 and 98 days, respectively, after the final determinations were mailed to petitioner. The petition was received by the Court in an envelope that bears a designated private delivery service ship date of April 19, 2016, which date is 106 and 97 days, respectively after the mailing of the notices. Conversely, the time for filing a petition with this Court as to the January 4, 2016, notice expired on April 4, 2016, and the time for petitioning with respect to the January 13, 2016, notice expired on April 12, 2016. The petition was not filed within those periods.

Additionally, to the extent that petitioner might look to communications with the IRS from January through April of 2016 as evidencing timely responses, the law suggests to the contrary. The scenario parallels the well-settled law in the notice of deficiency context that once such a notice has been issued, further administrative contact or consideration does not alter or suspend the running of the 90-day period. Even confusing IRS responses or correspondence during the administrative process cannot override the clearly stated deadline in the statutory notice. Such confusion is not uncommon given that the IRS frequently treats as separate processes or proceedings what taxpayers view as a single dispute. Taxpayers not infrequently have also conflated this Court with an IRS unit, but the IRS is a completely separate and independent entity from the Tax Court. Petitioner has suggested no relevant distinction in the context of a final determination under section 6015, I.R.C., and the Court sees none.

Although section 7502, I.R.C., allows a timely mailed petition to be treated as timely filed, that section mandates that the envelope bearing the petition be "properly addressed to the agency, officer, or office with which the document is required to be filed." Sec. 7502(a)(2)(B), I.R.C. A petition seeking judicial review of a final determination must be filed with this Court and not the Internal Revenue Service. Sec. 6015(e), I.R.C. Hence, the mailing of a petition, appeal, protest, or other documentation to the Internal Revenue Service is not sufficient to confer jurisdiction on this Court. See *Axe v. Commissioner*, 58 T.C. 256 (1972). The statute is clear, and this Court must follow it. See *Estate of Cerrito v. Commissioner*, 73 T.C. 896 (1980). The Court would also note that a final determination issued to a taxpayer states that a petition must be filed with United States Tax Court (not the IRS) and provides expressly that the filing period extends 90 days from the date of the letter. The notice is likewise explicit in giving the Court's address as "400 Second Street, NW, Washington, DC 20217".

Moreover, petitioner's attempts to rely on the March 3, 2016, letter are not supported by existing jurisprudence. Petitioner has offered no case that treats a Letter 5188C as a final determination permitting judicial review, and the Court finds petitioner's efforts to distinguish Barnes v. Commissioner, 130 T.C. 248 (2008), in that regard unconvincing. Likewise problematic are petitioner's attempts to posit an equitable estoppel argument. Again, it is equally well settled that where the Commissioner's representatives provide erroneous advice based upon a mistaken interpretation of the law, courts and the Commissioner are not bound by the agent's statements and must follow the applicable statutes, regulations, and caselaw. See, e.g., Dixon v. United States, 381 U.S. 68, 72-73 (1965); Auto. Club of Mich. v. Commissioner, 353 U.S. 180, 183 (1957); Neri v. Commissioner, 54 T.C. 767, 771-772 (1970). Consequently, the same result must obtain regardless of whether the jurisdictional question is later raised by the Commissioner or by the Court sua sponte. Moreover, despite its superficial appeal, it has long been the rule that the doctrine of equitable estoppel is unavailable in these circumstances. As this Court has stated, an "estoppel argument must fail for the simple reason that the doctrine of estoppel cannot create jurisdiction where none otherwise exists." Energy Res., Ltd. v. Commissioner, 91 T.C. 913, 917 (1988).

With respect to any possible collection proceeding concerning 2005, 2006, 2007, and 2008, petitioner has at no time intimated the existence of any pertinent notice of determination. Suffice it to say that none of the IRS communications in the record constitutes, or can substitute for, a notice of determination issued pursuant to sections 6320 and/or 6330, I.R.C., that will permit review of collection activity by the Tax Court. Only a narrow class of specified determinations by the IRS can open the door to the Tax Court. Additionally, petitioner's opposition does not seem to press this characterization.

In conclusion, while the Court is sympathetic to petitioner's situation and understands the frustration here, 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). As a Court of limited jurisdiction, the Court is simply unable to offer any remedy or assistance when a petition is filed late. Unfortunately, governing law recognizes no reasonable cause or other applicable exception to the statutory deadline. Accordingly, since petitioner has failed to establish that the petition was mailed or filed within the required period with respect to the notices of final determination concerning relief from joint and several liability for 2005, 2006, 2007, and 2008, and has failed to establish the existence of any other determination by the IRS that could support this litigation, this case must be dismissed for lack of jurisdiction.

The premises considered, it is

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

**(Signed) L. Paige Marvel
Chief Judge**

ENTERED: **JUL 11 2016**