

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

PETE D. NUNEZ,)	
)	
Petitioner,)	
)	
v.)	Docket No. 2925-17 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On January 8, 2018, respondent filed a Motion to Dismiss for Lack of Jurisdiction (respondent’s motion). On January 11, 2018, the Court issued in an Order ordering petitioner to file a response to respondent’s motion on or before January 31, 2018. In that Order, the Court also warned petitioner that if he failed to respond to respondent’s motion, that the Court may consider petitioner’s failure to respond as consent to the relief sought in respondent’s motion. To date, petitioner has failed to file a response to respondent’s motion.

This case was called from the calendar for the Trial Session of the Court at San Francisco, California, on February 12, 2018. There was no appearance by or on behalf of petitioner. Counsel for respondent appeared and was heard. We shall grant respondent’s motion.

Background

On May 16, 2016, respondent sent petitioner, via certified mail, a Notice CP90, Final Notice of Intent to Levy for petitioner’s civil penalty liabilities for tax periods ending December 2010, September 2011, June 2012, September 2012, and December 2012, and petitioner’s tax years 2012 and 2014 (FNIL). That notice provided that petitioner had the right to request a collection due process (CDP) hearing to appeal the proposed levy action. In order to request a CDP hearing, the FNIL instructed petitioner to send completed Form 12153, Request for Collection Due Process or Hearing (Form 12153), to the following address by June 15, 2016:

SERVED May 21 2018

Internal Revenue Service
PO Box 145566
Cincinnati, OH 45250-5566

The FNIL further stated that if petitioner failed to timely file his Form 12153 by June 15, 2016, then he would “lose the ability the contest Appeals’ decision in the U.S. Tax Court.”

On June 6, 2016, petitioner sent the Internal Revenue Service (IRS), via certified mail: (1) Form 12153; (2) a copy of the FNIL; and (3) Form 2848, Power of Attorney and Declaration of Representative (Form 2848) (collectively, petitioner’s documents). In the Form 12153, petitioner requested a hearing, an equivalent hearing (if he did not meet the requirements for a timely CDP hearing), an installment agreement, an offer in compromise, and a withdrawal of the lien.. In that form, petitioner also indicated that he could not pay the balance of his liabilities. Petitioner sent those documents to the following address:

Internal Revenue Service
P.O. Box 145566
Hartford, CT 45250-5566

On June 15, 2016, the IRS’ Kansas City, Missouri office received petitioner’s documents. At a time not established by the record, but after June 24, 2016, the IRS’ Kansas City, Missouri office forwarded petitioner’s documents to the IRS’ Cincinnati, OH office. On July 15, 2016, the IRS’ Cincinnati, OH office received petitioner’s documents.

On January 10, 2017, the IRS’ Appeals Office (Appeals Office) sent petitioner a Decision Letter on Equivalent Hearing Under Internal Revenue Code Sections 6320 and/or 6330 (decision letter).

On February 6, 2017, petitioner filed the petition in this case. In that petition, petitioner seeks review of a purported Notice of Determination Concerning Collection Action Under Section 6320¹ and/or 6330 (notice of determination), for petitioner’s trust fund recovery penalties for tax periods December 2010, September 2011, June 2012, September 2012, and December 2012. The petition also stated in pertinent part:

¹Unless otherwise indicated, all section references are to the Internal Revenue Code and all Rule references are to the Tax Court Rules of Practice and Procedure.

Taxpayer disagrees that he did not file the request for a due processing hearing within the legal timeframe. In addition, the Taxpayer was not given the opportunity to provide support for the amounts reported on the Taxpayer's Form 433-A and Form 433-B.

On March 22, 2017, respondent filed an Answer to the petition. In his Answer, respondent acknowledged that on January 10, 2017, a decision letter was issued to petitioner with respect to petitioner's trust fund recovery penalties for tax periods December 2010, September 2011, June 2012, September 2012, and December 2012, but respondent denied that any notice of determination was issued to petitioner for those tax periods.

Discussion

This Court is a court of limited jurisdiction, and we may exercise that jurisdiction only to the extent authorized by Congress. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). This Court's jurisdiction in a case seeking review of a determination under section 6320 or 6330 for particular tax years depends, in part, upon the issuance of a valid notice of determination for those years by the Appeals Office under section 6320 or 6330. Secs. 6320(c) and 6330(d)(1); Rule 330(b); 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 Appeals Office within the 30-day period specified in section 6320(a) or 6330(a) and calculated with reference to an underlying Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 or Final Notice of Intent to Levy and Notice of Your Right to a Hearing for the particular tax years at issue.

If a taxpayer fails to timely file a request for hearing, but files a request within a one-year period calculated with reference to one of the types of notice of lien or levy mentioned above, then the taxpayer will receive a so-called equivalent hearing and corresponding decision letter. Kennedy v. Commissioner, 116 T.C. 255, 262-263 (2001). That decision letter, however, is not a notice of determination sufficient to invoke this Court's jurisdiction under section 6320 or 6330. Id. If a taxpayer fails to timely file a request for hearing within the one-year period mentioned above, then the taxpayer will not neither receive a hearing under section 6320 or 6330, nor an equivalent hearing. Secs. 301.6320-1(i)(2), Q&A-I7, I11; 301.6330-1(i)(2), Q&A, I7, I11, *Proced. & Admin. Regs.*

Generally, a document is considered filed with the IRS when it is received by that agency. United States v. Lombardo, 241 U.S. 73, 76 (1916); Jones v. United States, 226 F.2d 24, 28 (9th Cir. 1955). A request for hearing, however, will still be considered timely, even if it is delivered after the 30-day period specified in section 6320 or 6330 if that hearing request is delivered by U.S. mail to the appropriate agency, officer, or office after the date prescribed for filing, then the date of the U.S. postmark on the cover in which the document was mailed is deemed the date of delivery. See sec. 7502(a)(1). This “mailbox rule” applies only if: (1) the postmark date falls on or before the date prescribed for filing and (2) the document was deposited in the U.S. mail on or before that prescribed date. Sec. 7502(a)(2).

Section 301.7502-1(c)(1), Proced. & Admin. Regs., requires that the document: (1) be contained in a properly addressed envelope; (2) be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid; and (3) bear a postmark. In the case of registered or certified mail, the date of registration or the date of the U.S. postmark by a postal employee on the certified mail receipt, respectively, is treated as the postmark date of the mailed document. Sec. 301.7502-1(c)(1)(iii)(A), Proced. & Admin. Regs.

In this case, in order to timely file a request for hearing, petitioner had to send a completed Form 12153 to the following address by June 15, 2016:

Internal Revenue Service
PO Box 145566
Cincinnati, OH 45250-5566

Petitioner improperly addressed his envelope and inadvertently mailed his Form 12153 to the following address:

Internal Revenue Service
P.O. Box 145566
Hartford, CT 45250-5566

Presumably due to petitioner’s mistake in addressing the envelope, the IRS’ Cincinnati, OH office did not receive petitioner’s documents on or before June 15, 2016, but instead received them on July 15, 2016. Thus, unless the mailbox rule applied, petitioner did not timely file his Form 12153. Unfortunately, petitioner cannot rely on the mailbox rule to treat his Form 12153, that was delivered after the 30-day period specified in section 6320 and/or 6330, as timely filed because he did not properly address the envelope. See sec. 301.7502-1(c)(1), Proced. &

Admin. Regs. Therefore, the Appeals Office properly issued petitioner a decision letter for petitioner's trust fund recovery penalties for tax periods December 2010, September 2011, June 2012, September 2012, and December 2012, and as mentioned above, a decision letter is not a notice of determination sufficient to invoke's this Court's jurisdiction under section 6320 or 6330. Kennedy v. Commissioner, 116 T.C. at 262-263. Accordingly, we are obliged to dismiss this case for lack of jurisdiction.

Upon due consideration, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction filed January 8, 2018, is granted.

**(Signed) Joseph W. Nega
Judge**

ENTERED: **MAY 21 2018**