

UNITED STATES TAX COURT
WASHINGTON, DC 20217

TRAMY T. VAN,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 4460-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	

ORDER

On 7/26/2019, respondent filed a Motion To Dismiss for Lack of Jurisdiction as to Petitioner Tramy Van as to Tax Year 2010 seeking to dismiss so much of this case as relates to year 2010 and the petition filed at docket number 4460-17 (Petition #1) because, according to respondent, by Order of Dismissal on 3/8/2019, the Court dismissed another petition for 2010 filed at docket no. 15694-18 (Petition #2) for lack of jurisdiction, the Court denied respondent's Motion to Close on Ground of Duplication in the Petition #2 case, and the 2010 year was not properly contested in Petition #1. In his motion to dismiss, respondent states that he does not know if petitioner objects to the granting of the motion. Petitioner did not file a response. By order dated 8/26/2019, the Court scheduled respondent's motion to dismiss for hearing at the 9/30/2019 San Diego, California Trial Session of the Court. Respondent's motion was so heard on that date.

The issue here is whether Petition #1 contains an objective indication that petitioner intends to contest the 2010 tax year, invoking the Court's jurisdiction. Because we find that it does, as explained below, the Court denies respondent's Motion To Dismiss for Lack of Jurisdiction as to Petitioner Tramy Van as to Tax Year 2010.

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Background

On 11/23/2016, respondent sent three notices of deficiency-- one for tax year 2011, 2012, and 2013 (Notice #1) and the other two for tax year 2010. Petitioner was married and filed a joint return with her former spouse, Denny Chan, in 2010, but the couple divorced after 2010. Relevant here is that petitioner and Mr. Chan filed their 2010 return on 10/15/2011 reporting a net operating loss of \$192,763.00. Notice #1 was sent only to petitioner at her last known address and she received it. Respondent sent a 2010 notice to both petitioner and her former husband at Mr. Chan's last known address (Notice #2). Petitioner did not timely receive Notice #2. Respondent also sent a 2010 notice to petitioner and her former spouse at petitioner's last known address (Notice #3); however petitioner did not timely receive Notice #3.

Notice #1 proposed several adjustments, including an adjustment to the \$192,763.00 NOL carryforward from 2010 to 2011; the resulting proposed adjustments were as follows:

Notice #1 Addressed to Petitioner Only:

Year	Deficiency	Penalty Sec. 6663	Addition to Tax Sec. 6651(a)(1)
2011	\$350,669.00	\$263,001.75	\$87,167.00
2012	\$444,335.00	\$333,251.25	
2013	\$550,174.00	\$412,630.50	

Notices #2 and #3 had identical proposed adjustments as follows:

Notice #2 and #3 Addressed to Petitioner and Mr. Chan:

Year	Deficiency	Penalty Sec. 6663
2010	\$441,539.00	\$331,154.25

Petitioner and her former spouse filed petitions relating to the 2010 year with this Court, as follows:

On 1/24/2017, petitioner's former spouse petitioned the Court, at docket no. 2435-17, for relief from joint and several liability from the former couple's 2010 joint tax liability (the Chan Case); attached to that petition was Notice #2.

On 2/21/2017, petitioner filed a petition at docket no. 4460-17, contesting respondent's determination in Notice #1¹ (Petition #1). In paragraph five and, more importantly, in the attachment to Petition #1, petitioner explicitly contested:

*all the IRS's changes to the tax returns examined for the applicable tax years ending 2010 through 2013 for the following taxpayers:
Tramy T Van [petitioner]
Tramy Beauty School (Partnership)
Tramy Beauty School, Inc. (S Corp).*

Petitioner explained that she had not received a notice for 2010, but had expected to receive one.

On 5/1/17, respondent notified petitioner of her right to intervene in docket no. 2435-17, related to the Chan Case.

On 5/2/17, respondent filed an answer to Petition #1 alleging no notice was sent petitioner for tax year 2010 (i.e., respondent denied sending Notice #2 and Notice #3).

On 8/9/2018, petitioner filed another petition for 2010, at docket no. 15694-18 (Petition #2), and attached Notice #2, which notice was received from her ex-husband's counsel.

On 8/27/2018, in the Petition #1 case, respondent filed a Motion for Leave to File Amended Answer and admitted he sent petitioner a 2010 notice on 11/23/2016, and attached Notice #3. Respondent argued the Court has jurisdiction over 2010. Also on 8/27/2018, respondent filed a Motion to Consolidate the Chan Case with the Petition #1 case. On 8/28/2018, we granted both respondent's Motion for Leave to File Amended Answer and his Motion to Consolidate.

On 9/21/2018, in the Petition #2 case, docket no. 15694-18, respondent filed a Motion to Close on Ground of Duplication arguing that the Petition #2 case is a duplicate of the Petition #1 case because both petitions contest the 2010 year. Before the Court, under docket no. 15694-18, at that time, was only Notice #2 and no proof of certified mailing of any notice. Notice #2 was sent to her former

¹ Both parties agree Notice #1 is valid and petitioner timely filed a petition for 2011, 2012, and 2013.

spouse's last known address, not petitioner's last known address, and petitioner contested the motion on that ground. In the motion, respondent even acknowledged that jurisdiction is correct as follows: "[t]he parties agree petitioner is entitled to Court review of her Federal income tax for 2010." Such statement presumably alluding to the on-going case in this matter, docket no. 4460-17. On 11/13/2018, we denied respondent's motion.

Then, on 1/31/2019, in the Petition #2 case, respondent filed a Motion to Dismiss for Lack of Jurisdiction and for the first time attached a certified mailing list, showing he sent petitioner Notice #3 by certified mail to her last known address on 11/23/2016. This was provided nearly two years after Petition #1 was filed. By Order of Dismissal on 3/8/2019, we granted respondent's motion finding that Petition #2 (filed on 8/9/2018) was untimely because it was filed with the Court eighteen (18) months after the 90-day period to file a petition under section 6213.²

Discussion

This Court is a court of limited authority and may only exercise jurisdiction 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). See secs. 6213, 7502; see also Rule 13(c). There are two requirements for our jurisdiction in a deficiency case: (1) a valid notice of deficiency issued by Commissioner and (2) a timely petition filed by the taxpayer. Secs. 6212, 6213; Frieling v. Commissioner, 81 T.C. 42, 48 (1983); see also Martin v. Commissioner, T.C. Memo. 2003-288, 2003 Tax Ct. Memo LEXIS 290, at *16-17. We have jurisdiction to determine our jurisdiction over a particular case. See LG Kendrick, LLC v. Commissioner, 146 T.C. 17, 27 (2016), aff'd, 684 Fed. Appx. 744 (10th Cir. 2017). Our jurisdiction is based on the snapshot in time when petitioner timely filed the petition. See John C. Hom & Assocs., Inc. v. Commissioner, 140 T.C. 210, 215 (2013) (holding jurisdiction is determined at the time a petition is filed); Fisher v. Commissioner, T.C. Memo. 2008-256, 2008 Tax Ct. Memo LEXIS 255, at *5; Kupersmit v. Commissioner, T.C. Memo 2014-247, at *7.

²All section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated.

Our case law clarifies when a petition clearly indicates that respondent's determination for a particular year is being contested, thereby conferring the Court jurisdiction. It has been this Court's policy to be liberal in treating as petitions all documents filed by taxpayers within the 90-day period, where the documents were intended as petitions. Normac, Inc. v. Commissioner, 90 T.C. 142, 147 (1988). For a petition to cover a particular year, it must contain some objective indication that petitioner contests the deficiency determined by the Commissioner for that year. O'Neil v. Commissioner, 66 T.C. 105, 107 (1976); Normac v. Commissioner, 90 T.C. at 147-148. In determining whether the petition confers the Court jurisdiction we look to the four corners of the document for objective facts that suggest petitioner contests a particular year. Jennings v. Commissioner, T.C. Memo. 1997-433, 1997 Tax Ct. Memo LEXIS 511, at *6-7.

(1) Valid Notice of Deficiency for 2010

In determining whether the Court has jurisdiction over a particular year, we first ask whether petitioner was sent a valid notice of deficiency by Commissioner. Sec. 6212(b). Section 6212(a) provides that once the Secretary determines there is a deficiency in income tax, he is authorized to mail a notice of deficiency by certified or registered mail. Section 6212(b) further provides that the mere mailing of the notice of deficiency to the taxpayer's "last known address" shall constitute sufficient notice. The validity of a notice of deficiency does not depend on receipt by the taxpayer, but rather upon proper mailing to the taxpayer's last known address. Hoffenberg v. Commissioner, 905 F.2d 665 (2d Cir. 1990), aff'd T.C. Memo. 1989-676; King v. Commissioner, 857 F.2d 676, 681 (9th Cir. 1988), aff'd on other grounds 88 T.C. 1042 (1987); Keado v. United States, 853 F.2d 1209, 1211-1212 (5th Cir. 1988). Accordingly, a notice that is properly mailed to the taxpayer's last known address by certified or registered mail is deemed received even if it is never actually received prior to the expiration of the 90-day filing period. Sec. 6212(b); Pyo v. Commissioner, 83 T.C. 626, 632-633 (1984); see also Frieling v. Commissioner, 81 T.C. 42, 52 (1983); McKay v. Commissioner, 89 T.C. 1063, 1068 (1987), aff'd, 886 F.2d 1237 (9th Cir.1989) ("Congress did not create a mandatory address to which a notice of deficiency must be mailed, but rather provided the Commissioner a 'safe harbor' address to which he could send the notice.").

By Order of Dismissal on 3/8/2019, we found the 2010 notice was deemed received by petitioner when it was sent to her last known address on 11/23/2016. Thus, Notice #3 is a valid notice of deficiency. Sec. 6212.

(2) Timely filed Petition for 2010

Next, we must decide whether petitioner timely petitioned 2010 in Petition #1. Our jurisdiction is determined by a snapshot in time approach. See John C. Hom & Assocs., Inc. v. Commissioner, 140 T.C. 210, 215 (2013) (holding jurisdiction is determined at the time a petition is filed); Fisher v. Commissioner, 2008 Tax Ct. Memo LEXIS 255, at *5; Kupersmit v. Commissioner, T.C. Memo. 2014-247, at *7. The document filed by the taxpayer only invokes the Court's jurisdiction if it is filed within the 90-days after respondent mails the notice of deficiency in accordance with section 6212. Secs. 6213(a), 7502 (providing timely mailing is treated as timely filing).

Because Notice #3 was sent by certified mail on 11/23/2016, Petition #1 is only timely if it is postmarked on or before 2/21/2017. Petition #1 was filed 2/21/2017, which was within the statutory 90-day period. Thus, Petition #1 was timely filed.

(3) Objective Indication Petitioner Contests 2010 Determination

Next, we must decide whether, in Petition #1, petitioner asked the Court to redetermine the deficiencies that respondent had determined against her in 2010. Normac v. Commissioner, 90 T.C. at 147. To be treated as a petition from a particular notice of deficiency, the document filed by taxpayers within the 90-day period must contain some objective indication that the taxpayer contests the deficiency determined by respondent against the taxpayer. InverWorld, Ltd. v. Commissioner, 98 T.C. 70, 75 (1992), aff'd, 979 F.2d 868 (D.C. Cir. 1992); Normac v. Commissioner, 90 T.C. at 147-148; O'Neil v. Commissioner, 66 T.C. at 107; see Hill v. Commissioner, T.C. Memo. 1988-198; Franks v. Commissioner, T.C. Memo. 1986-470, aff'd without published opinion, 828 F.2d 23 (9th Cir. 1987). Further, our Court Rules provide a petition must be "complete so as to enable ascertainment of the issues intended to be presented." Rule 34(a). "[T]he propose of [a petition, along with other pleadings filed in this Court] is to give the parties and the Court fair notice of the matters in controversy and the basis for their respective positions." Rule 31(a).

Petition #1 contains an objective indication that petitioner contests respondents determinations for 2010; and, as such, enables ascertainment of the issues to be presented and provides respondent and the Court with fair notice of petitioner's intention to contest the 2010 year. Jennings v. Commissioner, 1997 Tax Ct. Memo LEXIS 511, at *6-7; see also Rule 34(a). In paragraph six of

Petition #1, petitioner contests "all" changes to her 2010 return with respect to her as an individual and her two businesses, Tramy Beauty School (Partnership) and Tramy Beauty School, Inc. (S Corp). She also clearly emphasized that she was not in actual receipt of Notice #3, which explains why the 2010 notice is not attached to Petition #1. Similarly, petitioner asserts she actually received Notice #1, which included a deficiency determination for 2011, 2012 and 2013. The 2011 year in Notice #1 is uniquely interrelated to the 2010 tax year in Notice #3 because the \$192,763 net operating loss carryforward disallowed in the former was carried forward from the latter. Petitioner gave the Court and respondent fair notice of her intention to contest the 2010 deficiency by specifically disagreeing with all IRS changes for 2010 as to herself as an individual and her respective businesses. As such, Petition #1 (1) shows petitioner's intent to contest Commissioner's redetermination of the 2010 tax year, (2) clearly reflects the issues involved in such tax year, and (3) provided the Court and respondent with fair notice that 2010 would be a matter in controversy when Petition #1 was filed on 2/21/2017. O'Neil v. Commissioner, 66 T.C at 107; see also Rule 34(a); Jennings v. Commissioner, 1997 Tax Ct. Memo LEXIS 511, at *6-7. Thus, the Court has jurisdiction over the 2010 tax year.

Conclusion

In sum, we deny respondent's Motion to Dismiss for Lack of Jurisdiction as to Petitioner Tramy Van as to Tax Year 2010. Under our precedent, Notice #3 was deemed to be received by petitioner because it was mailed in accordance with section 6212(b). This safe harbor, however, does not prevent petitioner from access to the Court because she was unaware of a deemed received notice when she filed Petition #1. Rather, we use a snapshot in time approach; petitioner explicitly contests any redetermination with respect to 2010 in Petition #1; she observed that a year at issue in the notice she actually received is interrelated to tax year 2010, and as such, brought it to respondent and the Court's attention. Stated differently, in the Petition #1 case, respondent's Notice #3 is valid, petitioner contested respondent's redetermination within 90 days of such notice, and although she asserts she did not receive a 2010 notice, in Petition #1 she explicitly contested "all the IRS's changes to the tax returns examined for the applicable tax years ending 2010 through 2013." Thus, the Court has jurisdiction over the 2010 year in the Petition #1 case because it satisfies the statutory requirements under sections 6212(b) and 6213(a), and contains an objective indication that petitioner asked us to redetermine the deficiencies respondent determined against her for the 2010 year.

All other arguments raised by the parties are either moot or without merit. To reflect the foregoing, and upon due consideration, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction as to Petitioner Tramy Van as to Tax Year 2010 is denied.

**(Signed) Elizabeth A. Copeland
Judge**

Dated: San Diego, California
September 30, 2019