

Exh. B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-60135



BILLY R. MELOT,

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee

A True Copy
Certified order issued May 10, 2018

Jyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Appeal from a Decision of the
United States Tax Court

Before SMITH, HAYNES, and WILLETT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that appellee's motion to dismiss the appeal for
improper venue is GRANTED; accordingly, there is no need to address
appellee's alternative motion to transfer the appeal to the United States Court
of Appeals for the Tenth Circuit.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

BILLY R. MELOT,)
Petitioner,)
v.) Docket No. 21360-17.
COMMISSIONER OF INTERNAL REVENUE,)
Respondent)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On October 3, 2017, a petition was filed to commence the above-docketed matter, alleging dispute with respect to tax liabilities imposed as restitution following a criminal conviction for tax evasion. The taxable years 1987 through 1993 were referenced as the years in issue, but no copy of any notice of deficiency or determination from the Internal Revenue Service (IRS) was attached thereto. Rather, copies of communications from the IRS attached to the petition consisted of: (1) Seven Notices CP94, dated July 18, 2016, issued for each of the 1987 through 1993 years, advising petitioner of unpaid balances due for the restitution; and (2) two letters (a Letter 2645C, dated September 8, 2016, and a Letter 2644C, dated October 26, 2016), both advising petitioner that the IRS remained in the process of reviewing an inquiry received August 11, 2016, regarding 1987. Additional attachments comprised various documents from the criminal proceedings. A supplement to the petition was then filed on December 1, 2017, wherein petitioner seemed to reference as well the 1994 through 2010 tax years.

On December 1, 2017, respondent filed a Motion To Dismiss for Lack of Jurisdiction, which motion was followed by a supplement thereto on December 19, 2017. The motion as supplemented was made on the general premise that, as of the date the petition herein was filed, no notice of deficiency or determination had been issued that would allow petitioner to invoke the Court's jurisdiction at that juncture as to 1987 through 2010. More specifically, the motion set forth circumstances indicating as grounds for dismissal: (1) No notice of deficiency, as authorized by section 6212 and required by section 6213(a) of the Internal Revenue Code (I.R.C.) to form the basis for a petition to this Court, had been sent to petitioner with respect to taxable years 1987 through 2010; (2) the petition was not timely filed within the statutory period

prescribed by section 6330(d) or 7502, I.R.C., with respect to a notice of determination concerning collection action for taxable years 1987 through 1993, and that a notice of determination for such years had been the subject of a collection proceeding at Docket No. 7756-17L; and (3) no other determination had been made that would confer jurisdiction on the Court for 1987 through 2010. Review of the record for the prior litigation shows that the notice of determination had been dated February 21, 2017; the petition had been filed on April 6, 2017; and an Order of Dismissal for Lack of Jurisdiction closing the case had been entered August 7, 2017. That Order had dismissed the case as untimely filed.

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 seeking the redetermination of a deficiency, the jurisdiction of the Court depends, in part, on the issuance by the Commissioner of a valid notice of deficiency to the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Frieling v. Commissioner, 81 T.C. 42, 46 (1983). The notice of deficiency has been described as "the taxpayer's ticket to the Tax Court" because without it, there can be no prepayment judicial review by this Court of the deficiency determined by the Commissioner. Mulvania v. Commissioner, 81 T.C. 65, 67 (1983). The jurisdiction of the Court in a deficiency case also depends in part on the timely filing of a petition by the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Brown v. Commissioner, 78 T.C. 215, 220 (1982). In this regard, section 6213(a), I.R.C., provides that the petition must be filed with the Court within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day). The Court has no authority to extend this 90-day (or 150-day) period. Joannou v. Commissioner, 33 T.C. 868, 869 (1960). However, a petition shall be treated as timely filed if it is filed on or before the last date specified in such notice for the filing of a Tax Court petition (but after issuance), a provision which becomes relevant where that date is later than the date computed with reference to the mailing date. Sec. 6213(a), I.R.C. Likewise, 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.

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, 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.

Other types of IRS notice which may form the basis for a petition to the Tax Court, likewise under statutorily prescribed parameters, are a Notice of Determination Concerning Your Request for Relief From Joint and Several Liability, a Notice of Final Determination Not To Abate Interest, and a Determination of Worker Classification. No pertinent claims involving section 6015, 6404(h), or 7436, I.R.C., respectively, have been implicated here.

Petitioner was served with a copy of respondent's motion, as supplemented, and, on January 16, 2018, filed a response in objection. Therein, petitioner offered a litany of complaints regarding the processing of his various tax years by the IRS, but he neither cited nor attached any relevant notice of deficiency or determination that could provide the Court with jurisdiction over 1987 through 2010 in this case. Rather, petitioner suggested an expansive and novel view of the Court's jurisdiction as follows:

the Tax Court ultimately has the final jurisdiction in which the tax determination is in error or is attempted to be collected in a wrongful manner. Here, the IRS has implemented a tax lien that has a standing, on-going effect against any properties that would be acquired by the Petitioner without being subjected to any payments that have taken place or otherwise any defects that may have occurred. By having such a tax lien is not in accordance to the Internal Revenue Code as it requires that any determination concerning collection must be reviewed and adjusted accordingly to either payments made, deductions, levees, or otherwise.

Petitioner then went on to chronicle alleged errors with the underlying criminal indictment that formed the basis for the referenced lien for restitution liabilities, leading to purportedly inflated amounts, and he closed: "Based on such failures, this matter is now before the Tax Court, which has authority and jurisdiction over all tax matters that require redetermination". Attached to the response was a copy of a Form 668(Y)(c), Notice of Federal Tax Lien, for years 1987 through 1993, dated September 19, 2016, and filed at Lea County, New Mexico. A further exhibit was then provided in a supplement filed January 22, 2018, which comprised the first page of a Form 12153, Request for a Collection Due Process or Equivalent Hearing, apparently seeking such a hearing for 1987 through 2010. It is unclear if or when such form was ever

submitted to the IRS, and it can in any event have no conceivable bearing on the instant proceeding.

Hence, given the foregoing, the absence on the record provided of any pertinent notice to support an exercise of jurisdiction over the 1987 through 2010 years in this case as of the October 3, 2017, date the petition was filed becomes apparent. To the extent that the matter might be characterized as stemming from the February 21, 2017, notice of determination for 1987 through 1993 previously petitioned at Docket No. 7756-17L, the October 3, 2017, petition would be untimely by a margin of more than six months. For 1994 thorough 2010, no party has claimed that a notice of determination concerning collection action was issued. Likewise, as to a deficiency case for 1987 though 2010, the record is equally bereft of any evidence or suggestion that respondent has at any time issued a notice of deficiency under section 6212, I.R.C., that would confer jurisdiction on this Court. The Court is simply without authority to consider the propriety of any IRS activity for 1987 through 1993 in absence of a notice to petitioner within the meaning of the statutes discussed above.

Similarly, 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). Accordingly, since petitioner has failed to establish that the petition was mailed or filed within the required period with respect to the notice of determination for 1987 through 1993 and has failed to establish the existence of any other notice or determination by the IRS that could support this litigation for 1993 through 2010, dismissal on those grounds would follow under the usual jurisdictional proscriptions.

Moreover, aside from general parameters of timeliness or absence of appropriate notice, because petitioner previously challenged the notice of determination for 1987 through 1993 at Docket No. 7756-17L, it likewise follows that such notice does not provide a basis for petitioner to invoke the Court's jurisdiction in this action, nor does the Court have the authority to vacate its disposition, which is now final. See Abatti v. Commissioner, 859 F.2d 115, 117 (9th Cir. 1988), aff'g 86 T.C. 1319 (1986). Except in very limited situations, none of which has been shown to apply here, this Court lacks jurisdiction over a proceeding once a decision or dismissal for lack of jurisdiction becomes final within the meaning of section 7481, I.R.C. See sec. 6214(d), I.R.C.; Stewart v. Commissioner, 127 T.C. 109, 112 (2006); Rice v. Commissioner, T.C. Memo. 2006-236. A decision or dismissal of the Tax Court becomes final "Upon the expiration of the time allowed for filing a notice of appeal, if no such notice has been duly filed within such time". Sec. 7481(a)(1), I.R.C. Section 7483, I.R.C., provides that a notice of appeal may be filed within 90 days after a decision or dismissal is entered. Consequently, the dismissal in Docket No. 7756-17L has long since become final, and the Court therefore may not revisit that disposition.

The record at this juncture suggests that petitioner sought the assistance of the Court after having become frustrated with the IRS but that the petition here was not based upon or instigated by a specific IRS notice expressly providing petitioner with the right to contest a particular IRS determination in this Court, as of the time the case was filed. Suffice it to say that no IRS communication has been supplied or mentioned by petitioner to date that constitutes, or can

substitute for, a notice of deficiency under section 6212, I.R.C., or a notice of determination issued pursuant to sections 6320 and/or 6330, I.R.C, regarding 1987 through 2010, or any other of the narrow class of specified determinations by the IRS that can open the door to the Tax Court, as of the date the petition was filed. Moreover, the expansive view of the Court's jurisdiction expressed in the objection clearly exceeds the bounds of the limited jurisdiction detailed above. Absent a specific statutory grant to the Court to address a particular notice or scenario, the Court has no general jurisdiction to consider and redress complaints simply because they may pertain to taxes.

Accordingly, the premises considered, it is

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

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

ENTERED: **JAN 25 2018**