

No. _____

IN THE

Supreme Court of the United States

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JACK S. KANNRY, JOYCE F. KANNRY,

Petitioners,

—v.—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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19-494

Kannry v. Commissioner of Internal Revenue

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit,
held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of
New York, on the 20th day of December, two thousand nineteen.

PRESENT:

ROBERT A. KATZMANN,
Chief Judge,
GUIDO CALABRESI,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

JACK S. KANNRY, JOYCE F. KANNRY,

Petitioners-Appellants,

v.

19-494-ag

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

For Petitioners-Appellants:

JACK S. KANNRY, ESQ., *pro se*, New York, New York.

For Respondent-Appellee:

NORAH E. BRINGER, Attorney (Teresa E. McLaughlin, Attorney, *on the brief*), for Richard E. Zuckerman, Principal Deputy Assistant Attorney General, Tax Division, U.S. Department of Justice, Washington, DC.

Appeal from an order of the United States Tax Court (Nega, J.) denying Petitioners-Appellants' motions to vacate or reconsider an order granting summary judgment to Respondent-Appellee and denying summary judgment to Petitioners-Appellants.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order of the United States Tax Court is **AFFIRMED**.

Petitioners-Appellants Jack and Joyce Kannry, proceeding *pro se*,¹ appeal a United States Tax Court's order denying their motions to vacate or reconsider the Tax Court's grant of summary judgment to the Commissioner of Internal Revenue and denial of summary judgment to the Kannrys on the Kannrys' challenge to the filing of a Notice of Federal Tax Lien ("NFTL") against them for the tax years 2011-14. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

The Kannrys, who are married, filed a joint personal income tax return in each of the years 2011, 2012, 2013, and 2014. For each year, the Kannrys reported a positive amount of tax due, but have failed to pay the full amount of tax due. The facts with respect to the 2011 tax year are only slightly more complex, because in April 2013, the Kannrys filed an amended return in which they claimed additional deductions against their 2011 income related to losses suffered due to Hurricane Sandy. The Kannrys' amended 2011 return reported a newly reduced amount due of \$21,214, which the Kannrys then paid. After an audit, however, the Internal Revenue Service ("IRS") disallowed the Kannrys' claimed deductions in May 2015. In March 2016, the IRS mailed the Kannrys an NFTL informing them of a lien against their property in the amount of their unpaid income taxes for the years 2011-2014. The NFTL showed an unpaid amount for tax year 2011 that

¹ Petitioner-Appellant Jack S. Kannry is an attorney representing himself and his wife Joyce F. Kannry.

reflected the May 2015 disallowance of the Sandy-related deductions claimed on the Kannrys' amended 2011 return.

The Kannrys timely requested a Collection Due Process ("CDP") hearing, in which they contested the validity of the NFLT on the basis that it was "not permitted . . . in the absence of a prior assessment, in the form of a statutory notice of deficiency" and that no such assessment had occurred. Joint App'x 207. In a subsequent pre-hearing letter, the Kannrys confirmed that their challenge "solely [sought] withdrawal" of the NFLT, again taking the position that the NFLT was impermissible without a prior valid assessment of the tax due, which was itself impermissible without a prior notice of deficiency. Joint App'x 254. After the CDP hearing, the hearing officer rejected the Kannrys' challenge on the ground that no statutory notice of deficiency was required because the Kannrys had self-assessed the amounts due by filing their own tax returns for each of the years at issue. The Kannrys sought review in the Tax Court, which upheld the hearing officer's determination.² This appeal followed.

We review decisions of the Tax Court "in the same manner and to the same extent as decisions of the district courts in civil actions." 26 U.S.C. § 7482(a)(1); *see Williams v. Comm'r*, 718 F.3d 89, 91 (2d Cir. 2013) (per curiam). "We generally treat an appeal from a denial of a motion for reconsideration that largely renews arguments previously made in the underlying order as bringing up for review the underlying order or judgment." *Van Buskirk v. United Grp. of Cos., Inc.*, 935 F.3d 49, 52 (2d Cir. 2019).³ We review a grant or denial of summary judgment by the

² While the Tax Court proceedings were pending, the IRS abated the additional amount that it had assessed when disallowing the Kannrys' claimed deduction for the 2011 tax year. The Tax Court accordingly concluded that any error in sustaining the NFLT as it related to the Kannrys' 2011 tax return had been rendered harmless by the intervening abatement.

³ Unless otherwise indicated, in quoting cases, all citations, emphases, alterations, and internal quotation marks are omitted.

Tax Court *de novo*, *Eisenberg v. Comm'r*, 155 F.3d 50, 53 (2d Cir. 1998), and when the underlying tax liability is not in issue, we review the Commissioner's determination — including its applications of its own procedural rules, *Sunik v. Comm'r*, 321 F.3d 335, 337 (2d Cir. 2003) — for abuse of discretion, *Reichle v. Comm'r*, 303 F. App'x 987 (2d Cir. 2008). “Summary judgment is properly granted where no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law.” *Eisenberg*, 155 F.3d at 53. We review the Tax Court’s denials of motions to vacate and reconsider for abuse of discretion. *Cinema '84 v. Comm'r*, 412 F.3d 366, 370–71 (2d Cir. 2005) (motion to vacate); *LaBow v. Comm'r*, 763 F.2d 125, 129 (2d Cir. 1985) (motion for reconsideration).

In a challenge to a notice of determination sustaining an NFLT, the Tax Court confines its review to issues that were previously raised in the underlying CDP hearing. *See* 26 C.F.R. § 301.6320-1(f)(2). The Tax Court did not abuse its discretion by applying “this well-established procedural rule” in deciding not to address arguments that the Kannrys did not raise in their CDP hearing. *Beeler v. Comm'r*, 434 F. App'x 41, 43 (2d Cir. 2011). We therefore affirm the Tax Court to the extent it declined to consider any such arguments, without expressing any opinion as to their merits, and limit our own review to the Kannrys’ challenge to the NFLT.

Here, the only issue raised at the CDP hearing was the Kannrys’ argument that the NFLT should be withdrawn because taxes for the years at issue could not have been properly assessed in the absence of statutory notices of deficiency. The Tax Court correctly held this argument to be meritless.

“‘Assessment’ is the formal recording of a taxpayer’s tax liability on the tax rolls.” *Chai v. Comm'r*, 851 F.3d 190, 218 (2d Cir. 2017). “It is essentially a bookkeeping notation of what the taxpayer is required to pay the Government.” *Id.* It is true, as the Kannrys argue, that “[b]efore it can ‘assess’ a deficiency, the IRS must first determine a ‘deficiency’ in a taxpayer’s liability” and,

generally, must also mail a notice of deficiency to the taxpayer pursuant to 26 U.S.C. § 6212 and await Tax Court review (or the expiration of the statutory deadline to seek it) before initiating any collection procedures. *Id.*; *see* 26 U.S.C. § 6213(a). But the deficiency procedures described in 26 U.S.C. §§ 6212 and 6213 apply, by their terms, only where a “deficiency” exists within the meaning of the Internal Revenue Code, and not every unpaid and owing amount of tax is such a “deficiency.” In particular, there is no “deficiency” where, as here, the taxpayer has self-reported an amount due on his or her return and failed to pay that amount.

As relevant here, the Internal Revenue Code defines “deficiency” to mean “the amount by which the tax imposed” by federal law “exceeds the excess of . . . the sum of . . . the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus . . . the amounts previously assessed (or collected without assessment as a deficiency, over . . . the amount of rebates . . . made.” 26 U.S.C. § 6211(a). “[A] deficiency,” in other words, “is the amount of tax imposed *less* any amount that may have been reported by the taxpayer on his return.” *Laing v. United States*, 423 U.S. 161, 173 (1976) (emphasis added). Setting aside the now-abated amounts relating to the Kannrys’ amended 2011 return, the amounts at issue here are the same amounts that the Kannrys themselves reported on their returns, plus penalties and interest. Those amounts are simply not “deficiencies” as that term is defined in 26 U.S.C. § 6211(a).

The Kannrys’ principal contention is that the restrictions on pre-notice collection procedures described in 26 U.S.C. § 6213(a) should have barred the IRS from filing an NFTL with respect to the amounts at issue. But § 6213(a) restricts only the “assessment of a deficiency” and any “levy or proceeding in court for its collection.” 26 U.S.C. § 6213(a). Because the amounts at issue here were not “deficiencies” within the meaning of the Code, those restrictions did not apply. Instead, the Kannrys’ self-reported but unpaid tax amounts fell into a different category altogether,

meriting different treatment under the Code: Where taxpayers self-report an amount on their returns, the Code requires that such amounts be assessed immediately, without resort to the deficiency procedures described in §§ 6212 or 6213. *See* 26 U.S.C. § 6201(a)(1) (“The Secretary shall assess all taxes determined by the taxpayer . . . as to which returns . . . are made under [the Internal Revenue Code].”). Pre-collection deficiency procedures are similarly unnecessary to assess penalties incurred by a taxpayer’s failure to pay taxes or estimated tax, *see* 26 U.S.C. § 6665(b), or accrued interest, *see id.* § 6601(e)(1).

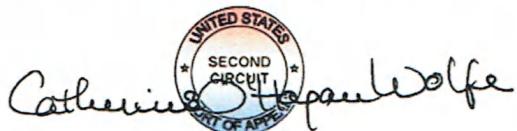
As for their amended 2011 return, the Kannrys assert that a statutory notice of deficiency was required for the amount assessed when the IRS rejected the Kannrys’ claimed casualty loss deduction. Essentially, the Kannrys ask us to hold that by filing an amended return showing a smaller amount than on their original return, they triggered a requirement that the IRS (should it disagree with the amounts reported on the amended return) mail them a notice of deficiency before assessing the larger amount first reported on the original return. But as we have explained, § 6201(a) authorizes — and indeed, requires — the IRS to assess the amounts reported on the original return immediately. And “there is nothing in either the Internal Revenue Code or the regulations thereunder that requires the IRS to accept the amended tax return in place of the original return previously filed.” *Dover Corp. & Subsidiaries v. Comm’r*, 148 F.3d 70, 72 (2d Cir. 1998). “[A]n amended return does not . . . change an assessment that has been made or vitiate a notice of deficiency” *Id.* at 73. Instead, “[a]n amended return constitutes a claim for refund that the Commissioner may review and adjust either by way of an immediate rejection of the refund claim or by tentative allowance, subsequent audit, and, if necessary, issuance of a notice of deficiency.” *Fayeghi v. Comm’r*, T.C. Memo. 1998-297, 1998 WL 477715, at *4 (1998).

Finally, even if the Kannrys would have been entitled to a statutory notice of deficiency with respect to any taxes in excess of what they reported on their original 2011 return, the IRS has

since abated that amount. Any harm to the Kannrys' substantial rights arising from the erroneous inclusion in the NFLT of that now-abated amount has been mitigated by the abatement. *See* 28 U.S.C. § 2111.

We have considered all of the Kannrys' remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the order of the Tax Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JACK S. KANNRY & JOYCE F. KANNRY,)
Petitioners,)
v.) Docket No. 19091-16 L.
COMMISSIONER OF INTERNAL REVENUE,)
Respondent)

ORDER AND DECISION

This case is calendared for trial at the Court's October 1, 2018, New York, New York, trial session. On August 29, 2016, petitioners filed a petition contesting respondent's Notices of Determination Concerning Collection Action(s) Under Section 6320¹ and/or 6330 (notices of determination), dated August 11, 2016, which sustained respondent's filing of the Notice of Federal Tax Lien and Your Right to a Hearing Under IRC 6320 (NFTL) for tax years 2011, 2012, 2013, and 2014 (years at issue).

On July 20, 2018, respondent filed a Motion for Summary Judgment, Declaration of Frederick C. Mutter in Support of Motion for Summary Judgment, and the Declaration of June L. Lee in Support of Motion for Summary Judgment (we shall refer collectively to respondent's Motion for Summary Judgment and the Declaration of Natalie Krueger in Support of Motion for Summary Judgment that respondent filed as respondent's motion). On July 23, 2018, the Court issued an Order ordering petitioners to file a response to respondent's motion on or before August 3, 2018.

On August 2, 2018, petitioner Jack S. Kannry (Mr. Kannry), filed a response to respondent's motion and a Declaration of Jack S. Kannry in support of response to respondent's motion. (We shall refer collectively to Jack S. Kannry's response

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.

to respondent's motion and the Declaration of Jack S. Kannry as Mr. Kannry's response.)

On August 2, 2018, petitioner Jack S. Kannry filed a Motion for Summary Judgment and a Declaration of Jack S. Kannry in Support of Motion for Summary Judgment. (We shall refer collectively to Jack S. Kannry's motion for summary judgment and the Declaration of Jack S. Kannry as Mr. Kannry's motion.) On August 3, 2018, the Court issued an Order ordering respondent to file a reply to Mr. Kannry's response and his motion on or before August 13, 2018.

On August 13, 2018, respondent filed a Reply to Mr. Kannry's response and a supplemental Declaration of Frederick C. Mutter in support of respondent's motion. (We shall refer collectively to respondent's reply to Mr. Kannry's response and the supplemental Declaration of Frederick C. Mutter as respondent's reply.) (We shall refer collectively to respondent's motion and respondent's reply as respondent's filings.).

On September 10, 2018, Jack S. Kannry filed a Motion for Leave to File a Motion Under 91(f). On September 14, 2018, respondent filed a Response to Motion for Leave to File a Motion Under Rule 91(f). On September 14, 2018, petitioner Joyce F. Kannry's filed a Response to Motion for Leave to File a Motion Under Rule 91(f).

For the reasons set forth in respondent's filings, the Court concludes that there are no genuine disputes of material fact and that respondent is entitled to summary adjudication as a matter of law. Similarly, for the reasons set forth in respondent's response to Mr. Kannry's motion, the Court concludes that there are no genuine disputes of material fact but that Mr. Kannry is not entitled to summary adjudication as a matter of law.

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary Judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b). A fact is material if it impacts the outcome of the suit under governing law, and a dispute is genuine when it is probative, not merely colorable. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-250 (1986). The opposing party cannot rest upon

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mere allegations or denials in her pleadings, but instead must set forth specific material facts showing that there is a genuine issue for trial. Rule 121(d). The moving party bears the burden of proving there is no genuine issue of material fact, and factual inferences will be read in a manner most favorable to the party opposing summary judgment. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985).

The assessment that respondent made for each of the taxable years 2011, 2012, 2013, and 2014 and that is involved in respondent's motion was based on the Federal income tax (tax) return that petitioners originally filed for each of those years. Petitioners did not file an amended tax return for any of the taxable years 2012, 2013, or 2014. However, they filed an amended tax return for the taxable year 2011. On July 27, 2015, respondent assessed a deficiency with respect to that amended tax return.

Thereafter on October 9, 2017, following respondent's issuance of the notices of determination concerning collection action(s) under section 6320 and/or 6330 dated August 11, 2016 (notices) upon which this case is based, respondent abated the deficiency for the taxable year 2011 that respondent had earlier assessed on July 27, 2015.

In verifying that all administrative and legal requirements had been followed during petitioners' CDP hearing, respondent's settlement officer relied on the Internal Revenue Service's certified transcripts (certified transcripts) for the taxable years 2011, 2012, 2013, and 2014. With respect to the taxable year 2011, the certified transcripts stated that petitioners had agreed to the deficiency that respondent had assessed on July 27, 2015. To the extent the settlement officer erred in relying on that statement in that transcript in verifying that all administrative and legal requirements had been followed, any such error was harmless. That is because, after respondent issued the notices on which this case is based, respondent considered whether petitioners had in fact agreed with the deficiency for the taxable year 2011 and concluded that they had not. Consequently, on October 9, 2017, respondent abated the deficiency that respondent had erroneously assessed on July 27, 2015, with respect to the amended tax return that petitioners had filed for the taxable year 2011. See Nestor v. Commissioner, 118 T.C. 162 (2002).

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Accordingly, for the reasons stated, it is hereby

ORDERED that respondent's Motion for Summary Judgment, filed July 20, 2018, is granted. It is further

ORDERED that Mr. Kannry's Motion for Summary Judgment, filed August 2, 2018, is denied. It is further

ORDERED that petitioner Jack S. Kannry's Motion for Leave to File a Motion Under 91(f), filed September 10, 2018, is denied. It is further

ORDERED AND DECIDED that the determinations in the notices with respect to the taxable years 2011, 2012, 2013, and 2014, upon which this case is based, are sustained except that the "Amount on Lien" shown in the notice of Federal tax lien filing and your right to a hearing under IRC 6320 that respondent sent to petitioners on March 10, 2016, is erroneous to the extent that that amount includes the deficiency that respondent assessed on July 27, 2015, and thereafter abated on October 9, 2017.

Petitioners are advised that they need not appear at the Court's October 1, 2018, New York, New York, trial session because this case will not be called from the calendar at that time given the action taken by the Court in this Order and Decision.

(Signed) Joseph W. Nega
Judge

ENTERED: **SEP 21 2018**

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JACK S. KANNRY & JOYCE F. KANNRY,)
)
Petitioners,)
)
v.) Docket No. 19091-16 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

This case is before us on petitioners' Motion to Vacate or Revise Pursuant to Rule 162 (motion to vacate),¹ filed October 4, 2018.² On October 11, 2018, this Court issued an Order directing respondent to file a response to petitioners' motion to vacate on or before November 1, 2018. On November 1, 2018, respondent filed a Response to Motion to Vacate or Revise pursuant to Rule 162. For the reasons discussed below, we shall deny petitioners' motion to vacate.

Background and Procedural History

The following material facts were not, and are not, the matter of a genuine dispute.

Respondent assessed the taxes underlying the Federal tax lien at issue (lien) pursuant to information self-reported by petitioners on their Federal income tax returns for tax years 2011, 2012, 2013 and 2014 (years at issue). On those returns

¹Unless otherwise noted, all section references are to the Internal Revenue Code, as amended and in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

²On October 3, 2018, petitioners filed a Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161 that. We find that motion to be, in substance, identical to petitioners' motion to vacate. Further, because no opinion or findings of fact have been rendered in this case, a Rule 161 motion is inapposite. For that reason, and for the reasons elucidated below, we deny petitioners' motion under Rule 161.

petitioners reported tax due and owing for the years at issue, but they failed to timely pay that tax.

On March 10, 2016, respondent mailed a Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320 (lien notice) to petitioners, with respect to their unpaid tax for the years at issue. On April 11, 2016, petitioners requested a CDP hearing with respect that lien notice. In their CDP hearing request petitioners sought only lien withdrawal, arguing that respondent's filing of that lien was premature because he had failed to provide petitioners a notice of deficiency prior filing that lien.

Respondent's Office of Appeals (Appeals Office) provided petitioners with their requested CDP hearing on July 26, 2016. In that CDP hearing, the Appeals Officer tasked with reviewing petitioners' case considered the issues raised by petitioners in the light of petitioners' administrative file and tax transcripts. On that record, the Appeals Officer determined that: (1) the present case did not warrant lien withdrawal because the record failed to demonstrate respondent filed the lien prematurely, or in any other manner out of compliance with applicable law or procedure; (2) petitioners were not entitled to a notice of deficiency prior to the assessment of their unpaid tax for the years at issue, as respondent's assessment of that tax was pursuant to information reported on the Federal income tax returns filed by petitioners for the years at issue; and (3) the filing of the Federal tax lien was appropriate in the light of petitioners' sizable balance due, represented the least intrusive means for the government to secure its interest in that unpaid tax. Accordingly, on August 11, 2016, the Appeals Officer sustained the lien and mailed to petitioners a notice of determination for each of the years at issue.

On August 29, 2016, petitioners filed a petition with this Court seeking review of those notices of determination. In that petition, as relevant here, petitioners alleged that the Appeals Officer had erred by failing to recognize that respondent had erroneously assessed a portion of their unpaid tax for 2011 (the erroneous assessment contention), and had prematurely filed the lien with respect to their unpaid tax for 2012, 2013 and 2014.

On October 9, 2017, respondent recognized and abated an erroneously assessed portion of petitioners' unpaid tax for 2011 (abatement for 2011).

On July 20, 2018, respondent filed a Motion for Summary Judgment (respondent's motion). On August 2, 2018, petitioners filed a Response to Motion

for Summary Judgment opposing respondent's motion (petitioner's response), and filed a competing Motion for Summary Judgment (petitioners' cross-motion).

On September 21, 2018, this Court entered an Order and Decision (decision) in this case. In that decision, the Court recognized that respondent's abatement for 2011 functionally mooted petitioners' erroneous assessment contention, and rendered harmless any error on the part of the Appeals Officer in that respect. This Court held, however, that petitioners' response and cross-motion failed to establish the existence of a genuine dispute of material fact with respect to the law governing our review of, or otherwise establish that petitioners were entitled to judgment as a matter of law with respect to the remaining issues in this case. For that reason, and on the basis of the record before us, we granted respondent's motion and denied petitioners' cross-motion, holding that, notwithstanding the abatement for 2011, the Appeals Officer did not abuse her discretion in sustaining the lien or in otherwise arriving at the conclusions detailed in the notices of determination.

Discussion

Petitioners' motion to vacate appears to argue that this Court erred by failing to sufficiently consider the allegations and arguments made in petitioners' response, cross-motion, and other filings in support thereof. Further, petitioners allege that, in doing so, this Court erred in holding that petitioners failed to demonstrate a genuine dispute of material fact that necessitated trial, or that petitioners were otherwise entitled to a decision in their favor as a matter of law.

The granting of a motion to vacate or revise a decision rests within the Court's discretion. Vaughn v. Commissioner, 87 T.C. 164, 166-167 (1986). The Court will not typically grant such a motion absent a showing of unusual circumstance, substantial error, or other reason justifying relief. See e.g., Rule 1(b) (cross referencing the Federal Rules of Civil Procedure); Fed. R. Civ. P. 60(b); Brannon's of Shawnee, Inc. v. Commissioner, 69 T.C. 999 (1978).

When faced with a motion for summary judgement, parties opposing summary judgement cannot rest upon mere allegations or denials in their pleadings, but must "set forth specific facts showing that there is a genuine dispute for trial." Rule 121(d). As this Court noted in its decision, a fact is material if it impacts the outcome of the suit under governing law, and a dispute is genuine when it is probative under the same. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-250 (1986).

This Court has jurisdiction to review the Commissioner's determinations as detailed in a notice of determination resulting from a collection due process (CDP) hearing. See sec. 6330(d). The law governing our review, in that sense, provides that when the underlying liability is not properly at issue we review the Commissioner's determination for an abuse of discretion.³ Goza v. Commissioner, 114 T.C. 176, 182 (2000). An abuse of discretion exists when the determination is arbitrary, capricious, or without sound basis in fact or law. See Giambelli v. Commissioner, 129 T.C. 107, 111 (2007). Further, the scope of our review is limited to only those issues properly raised by the taxpayer at his or her CDP hearing, with the exception that we must review whether the Appeals Office properly verified that the requirements of any applicable law or administrative procedure have been met. Giambelli v. Commissioner, 129 T.C. 107, 115 (2007); see Hoyle v. Commissioner, 131 T.C. 197, 202-203 (2008).

When reviewing the Commissioner's determinations for an abuse of discretion, we look to ensure that the Commissioner: (1) addressed any relevant issue raised by a taxpayer relating to the collection of his or her unpaid tax; (2) verified that the Secretary met all administrative and legal requirements; and (3) considered whether the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. See sec. 6330(c)(2).

At their CDP hearing, petitioners raised only a request for lien withdrawal. That request was predicated on petitioners' belief that the filing of the lien was premature because respondent had not issued notices of deficiency to petitioners before assessing the unpaid tax underlying that lien. The Appeals Officer reviewed petitioners' administrative file and tax transcripts. She determined that petitioners were not entitled to a notice of deficiency prior to the assessment of their unpaid tax for the years at issue, because the assessment of that tax was undertaken pursuant to information reported on the Federal income tax returns filed by petitioners for the years at issue. Accordingly, she determined assessment of that tax, and the subsequent filing of the lien complied with all applicable law and administrative procedure. Further, the Appeals Officer determined that petitioners had failed to demonstrate that they were entitled to lien withdrawal on any other

³Notwithstanding the error that gave rise to respondent's abatement for 2011, we do not construe any of petitioners' contentions, here, to constitute a dispute as to their underlying liability. See Kovacevich v. Commissioner, T.C. Memo. 2009-160, slip op. at 12-15.

- 5 -

grounds, and that the lien sufficiently balanced the government's need for efficient tax collection with the petitioners concerns regarding collection action.

In petitioners' response and cross-motion, petitioners argued that the Appeals Officer abused her discretion in arriving at those determinations. To that end, petitioners alleged that the Appeals Officer erred as a result of her reliance on petitioners' tax transcripts. Notwithstanding the issues underlying the abatement for 2011, however, petitioners failed set forth a factual showing sufficient to allow this Court to reasonably infer that the Appeals Officer abused her discretion by relying on petitioners' tax transcripts for the years at issue, or otherwise support their allegations of error. And in our decision we held accordingly.

Petitioners raise those same contentions, now, in their motion to vacate. Further, petitioners argue that this Court substantially erred by failing to give adequate consideration the "unusual circumstances" underlying their factual allegations, and by holding that petitioners failed to demonstrate a genuine dispute of material fact that necessitated trial, or otherwise demonstrate that they were entitled to a decision in their favor as a matter of law. We disagree. This Court fully considered petitioners allegations and arguments, and determined that they were either unsupported by the record, moot, or irrelevant to the law governing the issues presented by this case. Petitioners' motion, here, fails to demonstrate any defect in, or exceptional circumstance surrounding, our decision that might constitute a justifiable ground for granting the relief sought in their motion to vacate. Petitioners' attempt to rehash their previously rejected arguments through this motion to vacate is inappropriate. See Estate of Quick v. Commissioner, 110 T.C. 440, 441-442 (1998).

After due consideration and for cause, it is

ORDERED that petitioners' Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161, filed October 3, 2018, is denied. It is further

ORDERED that petitioners' Motion to Vacate or Revise Pursuant to Rule 162, filed October 4, 2018, is denied.

(Signed) Joseph W. Nega
Judge

Dated: Washington, D.C.
December 14, 2018

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of March, two thousand twenty.

Jack S. Kannry, Joyce F. Kannry,

Petitioners-Appellants,

v.

ORDER

Docket No: 19-494

Commissioner of Internal Revenue,

Respondent-Appellee.

Appellants, Jack S. Kannry and Joyce F. Kannry, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe



LII > U.S. Code > Title 42. THE PUBLIC HEALTH AND WELFARE
> Chapter 68. DISASTER RELIEF
> Subchapter I. FINDINGS, DECLARATIONS, AND DEFINITIONS
> **Section 5121. Congressional findings and declarations**

42 U.S. Code § 5121. Congressional findings and declarations

U.S. Code Notes

(a) The Congress hereby finds and declares that—

(1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and

(2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity;

special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result

from such disasters by—

- (1) revising and broadening the scope of existing disaster relief programs;**
- (2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;**
- (3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;**
- (4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;**
- (5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and**
- (6) providing Federal assistance programs for both public and private losses sustained in disasters^[1]**

(Pub. L. 93-288, title I, § 101, May 22, 1974, 88 Stat. 143; Pub. L. 100-707, title I, § 103(a), Nov. 23, 1988, 102 Stat. 4689.)

 U.S. Code
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LII > U.S. Code > Title 26. INTERNAL REVENUE CODE
> Subtitle A. Income Taxes > Chapter 1. NORMAL TAXES AND SURTAXES
> Subchapter B. Computation of Taxable Income
> Part VI. ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS
> **Section 165. Losses**

26 U.S. Code § 165 - Losses

U.S. Code Notes

(i) DISASTER LOSSES

(1) ELECTION TO TAKE DEDUCTION FOR PRECEDING YEAR

Notwithstanding the provisions of subsection (a), any loss occurring in a disaster area and attributable to a federally declared disaster may, at the election of the taxpayer, be taken into account for the taxable year immediately preceding the taxable year in which the disaster occurred.

(2) YEAR OF LOSS

If an election is made under this subsection, the casualty resulting in the loss shall be treated for purposes of this title as having occurred in the taxable year for which the deduction

is claimed.

(3) AMOUNT OF LOSS

The amount of the loss taken into account in the preceding taxable year by reason of paragraph (1) shall not exceed the uncompensated amount determined on the basis of the facts existing at the date the taxpayer claims the loss.

(4) USE OF DISASTER LOAN APPRAISALS TO ESTABLISH AMOUNT OF LOSS

Nothing in this title shall be construed to prohibit the Secretary from prescribing regulations or other guidance under which an appraisal for the purpose of obtaining a loan of Federal funds or a loan guarantee from the Federal Government as a result of a federally declared disaster may be used to establish the amount of any loss described in paragraph (1) or (2).

(5) FEDERALLY DECLARED DISASTERS For purposes of this subsection—

(A) In general

The term "Federally [1] declared disaster" means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(B) Disaster area

The term "disaster area" means the area so determined to warrant such assistance.

Part I

Section 165.--Losses

26 CFR 1.165-11: Election in respect of losses attributable to a disaster.

(Also § 139, 1033; 1.1033(1)-1.)

Rev. Rul. 2003-29

Under § 165(i) of the Internal Revenue Code, if a taxpayer suffers a loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5204c (1988 & Supp. V 1993) (the Act), the taxpayer may elect to claim a deduction for that loss on the taxpayer's federal income tax return for the taxable year immediately preceding the taxable year in which the disaster occurred. For purposes of § 165(i), a disaster includes an event declared a major disaster or an emergency under the Act.

Section 1.165-11(e) of the Income Tax Regulations provides that the election to deduct a disaster loss for the preceding year must be made by filing a return, an amended return, or a claim for refund on or before the later of (1) the due date of the taxpayer's income tax return (determined without regard to any extension of time to file the return) for the taxable year in which the disaster actually occurred, or (2) the due date of the taxpayer's income tax return (determined with regard to any extension of time to file the return) for the taxable year immediately preceding the taxable year in which the disaster actually occurred.

The provisions of § 165(i) apply only to losses that are otherwise deductible under § 165(a). An individual taxpayer may deduct losses if they are incurred in a trade or business, if they are incurred in a transaction entered into for profit, or if they are casualty losses under § 165(c)(3).

A determination by the President that an area warrants assistance by the Federal Government under the Act is also

relevant to § 139(a) (regarding the exclusion from gross income of certain qualified disaster relief payments) and § 1033(h) (regarding the deferral of gain realized upon the involuntary conversion of certain property).

The President has determined that, during 2002, the areas listed below have been adversely affected by disasters of sufficient severity and magnitude to warrant assistance by the Federal Government under the Act.

A cumulative list of the areas warranting assistance each year under the Act (beginning in 1998) is available at the Federal Emergency Management Agency (FEMA) Internet site at www.fema.gov. Accordingly, the Internal Revenue Service requests comments regarding the need for future publication of this revenue ruling. Comments should be submitted by May 1, 2003 either to:

Internal Revenue Service
P. O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:T:CRU(ITA)
Room 5041

or electronically via the Service internet site at: Notice.Comments@irs counsel.treas.gov (the Service comments e-mail address). All comments will be available for public inspection and copying.

FURTHER INFORMATION

For further information regarding this revenue ruling, contact James R. Roy on (202) 622-4950 (not a toll-free call).

LII > U.S. Code > Title 26. INTERNAL REVENUE CODE
> Subtitle F. Procedure and Administration > Chapter 66. LIMITATIONS
> Subchapter A. Limitations on Assessment and Collection
> Section 6501. Limitations on assessment and collection

26 U.S. Code § 6501. Limitations on assessment and collection

U.S. Code Notes

(a) GENERAL RULE

Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter, the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

(b) TIME RETURN DEEMED FILED

(1) EARLY RETURN

LII > U.S. Code > Title 26. INTERNAL REVENUE CODE
> Subtitle F. Procedure and Administration > Chapter 63. ASSESSMENT
> Subchapter B. Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes
> **Section 6212. Notice of deficiency**

26 U.S. Code § 6212. Notice of deficiency

U.S. Code Notes

(a) IN GENERAL

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) ADDRESS FOR NOTICE OF DEFICIENCY

(1) INCOME AND GIFT TAXES AND CERTAIN EXCISE TAXES

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41,

chapter 42, chapter 43, chapter 44, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) JOINT INCOME TAX RETURN

In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) ESTATE TAX

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) FURTHER DEFICIENCY LETTERS RESTRICTED

(1) GENERAL RULE

If the Secretary has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, of estate tax in respect of the taxable estate of the same decedent, of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year, of section 4940 tax for the same taxable year, or of chapter 42 tax, (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as

provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical or clerical errors), in section 6851 or 6852 (relating to termination assessments), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) CROSS REFERENCES For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of—

(A) Deficiency attributable to change of treatment with respect to itemized deductions, see section 63(e)(3).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033(a)(2)(C) and (D).

(C) Deficiency attributable to activities not engaged in for profit, see section 183(e)(4).

For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11 of the United States Code.

(d) AUTHORITY TO RESCIND NOTICE OF DEFICIENCY WITH TAXPAYER'S CONSENT

The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. Any notice so rescinded shall not be treated as a notice of deficiency for purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213(a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512(a) (relating to limitations in case of petition to Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

(Aug. 16, 1954, ch. 736, 68A Stat. 770; Pub. L. 85-866, title I, §§ 76, 89(b), Sept. 2, 1958, 72 Stat. 1661, 1665; Pub. L. 88-272, title I, § 112(d)(1), Feb. 26, 1964, 78 Stat. 24; Pub. L. 91-172, title

LII > U.S. Code > Title 26. INTERNAL REVENUE CODE
> Subtitle F. Procedure and Administration > Chapter 63. ASSESSMENT
> Subchapter B. Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes
> Section 6213. Restrictions applicable to deficiencies; petition to Tax Court

26 U.S. Code § 6213. Restrictions applicable to deficiencies; petition to Tax Court

U.S. Code [Notes](#)

(a) TIME FOR FILING PETITION AND RESTRICTION ON ASSESSMENT

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a),

the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

(b) EXCEPTIONS TO RESTRICTIONS ON ASSESSMENT**(1) ASSESSMENTS ARISING OUT OF MATHEMATICAL OR CLERICAL ERRORS**

If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical or clerical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212(c)(1) (restricting further deficiency letters), or of section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section. Each notice under this paragraph shall set forth the error alleged and an explanation thereof.

(2) ABATEMENT OF ASSESSMENT OF MATHEMATICAL OR CLERICAL

LII > U.S. Code > Title 26. INTERNAL REVENUE CODE
> Subtitle F. Procedure and Administration > Chapter 66. LIMITATIONS
> Subchapter A. Limitations on Assessment and Collection
> Section 6502. Collection after assessment

26 U.S. Code § 6502. Collection after assessment

U.S. Code [Notes](#)

(a) LENGTH OF PERIOD Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 10 years after the assessment of the tax.

LII > U.S. Code > Title 26. INTERNAL REVENUE CODE
> Subtitle F. Procedure and Administration > Chapter 64. COLLECTION
> Subchapter C. Lien for Taxes > Part II. LIENS
> **Section 6321. Lien for taxes**

26 U.S. Code § 6321. Lien for taxes

U.S. Code Notes

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(Aug. 16, 1954, ch. 736, 68A Stat. 779.)





Your Rights as a Taxpayer

Publication 1

This publication explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds. Also available in Spanish.

The Taxpayer Bill of Rights

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

IRS Department of the Treasury
Internal Revenue Service
P.O. BOX 9019
HOLTSVILLE NY 11742-9019

In reply refer to: 0137261047
Jan. 17, 2013 LTR 672C 0
130-28-6237 201112 30
00003752
BODC: SB

JACK S & JOYCE F KANNRY
515 E 79TH ST PH B
NEW YORK NY 10075-0781



06673

Social Security Number: 130-28-6237
Tax Period(s): Dec. 31, 2011

Form: 1040

Dear Taxpayer:

Thank you for your correspondence dated Dec. 26, 2012.

We received your payment of \$20,000.00, dated July 16, 2011. This payment was applied to your Form 1040 for the tax period ending Dec. 31, 2009.

Your payment of \$5,000.00 dated 4/16/2011, check number 1766 was received with you extension to file for tax year 2010. Therefore it was applied against your 2010 tax obligation. The check for \$20,000.00, check number 1943 and dated 7/16/2011 stipulated it was to be applied to the year 2009.

If you need forms, schedules or publications to respond to this letter, you can obtain them by visiting the IRS website at www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you have any questions, please call us toll free at 1-800-829-8374.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Your account has been coded as being a victim of hurricane Sandy. Therefore, you will be entitled to all provisions provided by FEMA.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Also, you may want to keep a copy of this letter for your records.

Telephone Number () _____ Hours _____

We apologize for any inconvenience and thank you for your cooperation.

29-8

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Jan. 17, 2013 LTR 672C 0
130-28-6237 201112 30
00003753

JACK S & JOYCE F KANNRY
515 E 79TH ST PH B
NEW YORK NY 10075-0781

Sincerely yours,

Andrea Vaughan

Andrea Vaughan, Dept. Mgr.
Toll Free Dept. 2, Op 1

Enclosure(s):
Copy of this letter

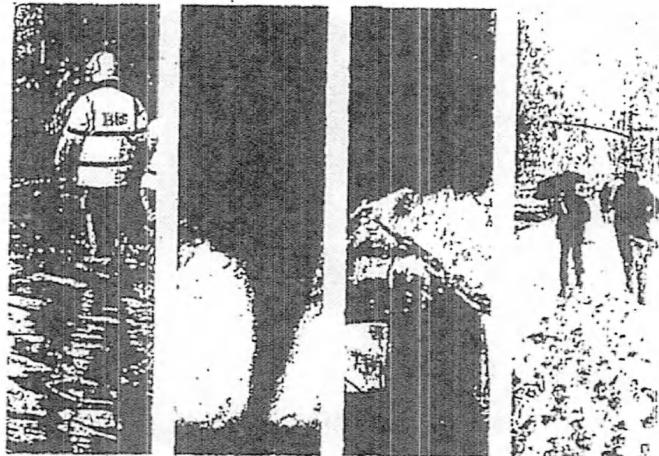


Small Business/Self-Employed

DISASTER ASSISTANCE AND
EMERGENCY RELIEF

Disaster Resource Guide

for Individuals and Businesses



Disaster Resource Guide for Individuals and Businesses

5. Disaster Tax Losses

A casualty is the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. If you experience damage to personal, income-producing, or business property, you may be able to claim a casualty loss deduction on your tax return.

You generally must deduct a casualty loss in the year it occurred. However, if the property was damaged as a result of a federally declared disaster you can choose to deduct that loss on your return for the tax year immediately preceding the year in which the disaster happened. A federally declared disaster is a disaster that took place in an area declared by the President to be eligible for federal assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. A list of areas warranting public or individual assistance (or both) is available at the Federal Emergency Management Agency (FEMA) web site at www.fema.gov. If you have already filed your return for the preceding year, you may claim the loss by filing an amended return, Form 1040X. If you elect to deduct your allowable loss on your prior year return, you must generally do so by the due date of the return for the year in which the disaster actually occurred, without extensions.

To determine the amount of your casualty loss you must:

1. Determine your adjusted basis in the property before the casualty
2. Determine the decrease in fair market value of the property as a result of the casualty
3. From the smaller of the amounts you determined in steps one and two subtract any insurance or other reimbursement you receive or expect to receive

Your adjusted basis in a property is generally what you paid for the property, increased or decreased, as a result of certain events. If you acquired the property in some other manner such as inheriting it or receiving it as a gift, you must figure your basis in a different manner. IRS Publication 551, *Basis of Assets*, explains how to figure your basis.

Fair market value is the price at which you could sell your property to a willing buyer when neither of you has to sell or buy and both know all the relevant facts. The decrease in fair market value used to figure the amount of the casualty loss is the difference between the property's fair market value immediately before and immediately after the casualty. Fair market value is generally determined through a competent appraisal. Absent a competent appraisal the cost of cleaning up or making certain repairs is acceptable under certain conditions as evidence of the decrease in fair market value the section in Publication 547, entitled "Figuring a Loss," for situations in which cost of repairs may be used.

Instructions for Form 1040X

(Rev. December 2011)

Amended U.S. Individual Income Tax Return



Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

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General Instructions

What's New

The IRS has created a page on IRS.gov for information about Form 1040X and its instructions at www.irs.gov/form1040x. Information about any future developments affecting Form 1040X (such as legislation enacted after we release it) will be posted on that page.

Form 1040X will be your new tax return, changing your original return to include new information. The entries you make on Form 1040X under the columns headed **Correct amount** and **Correct number or amount** are the entries you would have made on your original return had it been done correctly.

TIP Many find the easiest way to figure the entries for Form 1040X is to first make the changes in the margin of the return you are amending.

To complete Form 1040X, you will need:

- ✓ Form 1040X and these separate instructions;
- ✓ A copy of the return you are amending (for example, 2009 Form 1040), including supporting forms, schedules, and any worksheets you completed;
- ✓ Notices from the IRS on any adjustments to that return; and
- ✓ Instructions for the return you are amending. If you don't have the instructions, you can order them by calling 1-800-TAX-FORM (1-800-828-3876) or find them online at www.irs.gov/formspubs. If you are amending a prior year return, click on "Previous Years."

Purpose of Form

Use Form 1040X to do the following.

✓ Make certain elections after the prescribed deadline (see Regulations sections 301.9100-1 through -3 for details).

✓ Change amounts previously adjusted by the IRS. However, do not include any interest or penalties on Form 1040X; they will be adjusted accordingly.

✓ Make a claim for a carryback due to a loss or unused credit. However, you may be able to use Form 1045, Application for Tentative Refund, instead of Form 1040X. For more information, see Loss or credit carryback on page 2 and the discussion on carryback claims on page 3.

File a separate Form 1040X for each year you are amending. If you are changing your federal return, you also may need to change your state return.

Note. Allow 8 to 12 weeks for Form 1040X to be processed.

! If you file Form 1040X claiming a refund or credit for more than the allowable amount, you may be subject to a penalty of 20% of the disallowed amount. See Penalty for erroneous refund claim or credit on page 2.

Do not file Form 1040X if you are requesting a refund of penalties and interest or an addition to tax that you have

Form 1040X

NEW YORK/HURRICANE SANDY - OCT. 29, 2012*

Department of the Treasury - Internal Revenue Service

OMB No. 1545-0074

(Rev. December 2012)

► Information about Form 1040X and its separate instructions is at www.irs.gov/form1040x.

This return is for calendar year 2012 2011 2010 2009 ELECTING TO TREAT LOSS FROM FEDERALLY DECLARED DISASTER IN YEAR PRECEDING OCCURRENCE
Other year. Enter one: calendar year or fiscal year (month and year ended): (2011 RATHER THAN 2012)

Your first name and initial

JACK S.

Last name

KANNRY

Your social security number

000-00-0000

If a joint return, spouse's first name and initial

JOYCE F.

Last name

KANNRY

Spouse's social security number

000-00-0000

Home address (number and street). If you have a P.O. box, see instructions.

515 EAST 79TH STREET

Apt. no.

PH-B

Your phone number

(212) 984-7720

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).

NEW YORK, NY 10075

Foreign country name

Foreign province/state/county

Foreign postal code

Amended return filing status. You must check one box even if you are not changing your filing status.

Caution. In general, you cannot change your filing status from joint to separate returns after the due date.

Single Married filing jointly Married filing separately
 Qualifying widow(er) Head of household (If the qualifying person is a child but not your dependent, see instructions.)

Use Part III on the back to explain any changes

Income and Deductions

1 Adjusted gross income. If net operating loss (NOL) carryback is included, check here ►
 2 Itemized deductions or standard deduction
 3 Subtract line 2 from line 1
 4 Exemptions. If changing, complete Part I on page 2 and enter the amount from line 30
 5 Taxable income. Subtract line 4 from line 3

	A. Original amount or as previously adjusted (see instructions)	B. Net change—amount of increase or (decrease)—explain in Part II	C. Correct amount
1	423,451	0	423,451
2	249,714	+114,944	364,658
3	173,737	-114,944	58,793
4	7,400	0	7,400
5	166,337	-114,944	51,393
6	34,644	-27,788	6,856
7	0	0	0
8	34,644	-27,788	6,856
9	48,748	-9,993	38,750
10	83,392	-37,786	45,606

Tax Liability

6 Tax. Enter method used to figure tax: ORIGINAL PER TAX COMPUTATION WORK SHEET; CORRECT AMOUNT PER 2011 TAX TABLE
 7 Credits. If general business credit carryback is included, check here ►
 8 Subtract line 7 from line 6. If the result is zero or less, enter -0-
 9 Other taxes (AMT + SELF-EMPLOYMENT + HOUSEHOLD EMPLOYMENT)
 10 Total tax. Add lines 8 and 9

6	34,644	-27,788	6,856
7	0	0	0
8	34,644	-27,788	6,856
9	48,748	-9,993	38,750
10	83,392	-37,786	45,606

Payments

11 Federal income tax withheld and excess social security and tier 1 RRTA tax withheld (If changing, see instructions).
 12 Estimated tax payments, including amount applied from prior year's return
 13 Earned Income Credit (EIC)
 14 Refundable credits from Schedule(s) 8812 or M or Form(s) 2439
 4136 5405 8801 8812 (2009-2011) 8838 8863, 8885 or Other (specify):
 15 Total amount paid with request for extension of time to file, tax paid with original return, and additional tax paid after return was filed
 16 Total payments. Add lines 11 through 15

11	10,830	0	10,830
12	10,000	0	10,000
13	0	0	0
14	0	0	0

17 Overpayment, if any, as shown on original return or as previously adjusted by the IRS.
 18 Subtract line 17 from line 16 (If less than zero, see instructions)
 19 Amount you owe. If line 10, column C, is more than line 18, enter the difference
 20 If line 10, column C, is less than line 18, enter the difference. This is the amount overpaid on this return
 21 Amount of line 20 you want refunded to you
 22 Amount of line 20 you want applied to your (enter year): estimated tax 22

Complete and sign this form on Page 2.

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 11390L

Form 1040X (Rev. 12-2012)

29-11

Part I Exemptions

Complete this part only if you are:

- Increasing or decreasing the number of exemptions (personal and dependents) claimed on line 6d of the return you are amending, or
- Increasing or decreasing the exemption amount for housing individuals displaced by a Midwestern disaster in 2009.

See Form 1040 or Form 1040A Instructions and Form 1040X Instructions.

	A. Original number of exemptions or amount reported or as previously adjusted	B. Net change	C. Correct number or amount
23 Yourself and spouse. Caution. If someone can claim you as a dependent, you cannot claim an exemption for yourself.	23		
24 Your dependent children who lived with you	24		
25 Your dependent children who did not live with you due to divorce or separation	25		
26 Other dependents	26		
27 Total number of exemptions. Add lines 23 through 26	27		
28 Multiply the number of exemptions claimed on line 27 by the exemption amount shown in the Instructions for line 28 for the year you are amending	28		
29 If you are claiming an exemption amount for housing individuals displaced by a Midwestern disaster, enter the amount from Form 8914, line 6 for 2009	29		
30 Add lines 28 and 29. Enter the result here and on line 4 on page 1 of this form	30		
31 List ALL dependents (children and others) claimed on this amended return. If more than 4 dependents, see instructions.			

(a) First name	Last name	(b) Dependent's social security number	(c) Dependent's relationship to you	(d) Check box if qualifying child for child tax credit (see instructions)
				<input type="checkbox"/>

Part II Presidential Election Campaign Fund

Checking below will not increase your tax or reduce your refund.

Check here if you did not previously want \$3 to go to the fund, but now do.
 Check here if this is a joint return and your spouse did not previously want \$3 to go to the fund, but now does.

Part III Explanation of changes. In the space provided below, tell us why you are filing Form 1040X.

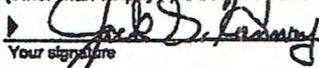
► Attach any supporting documents and new or changed forms and schedules.

- LINE 2. ITEMIZED DEDUCTIONS INCREASE OF 114,944 PER FORM 4684 CASUALTY LOSS (HURRICANE SANDY)
- LINE 6. TAX DECREASE OF 27,788 PER APPLICABLE TAX TABLE IN LIEU OF ORIGINAL TAX COMPUTATION WORKSHEET
- LINE 9. OTHER TAXES (AMT, SELF-EMPLOYMENT & HOUSEHOLD EMPLOYMENT) DECREASE OF 9,998. PER AMENDED FORM 6251 REDUCED AMOUNT

Sign Here

Remember to keep a copy of this form for your records.

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information about which the preparer has any knowledge.


Your signature

4/21/13

Date


Spouse's signature. If a joint return, both must sign.

4/21/13

Date

Paid Preparer Use Only

Preparer's signature Date Firm's name (or yours) if self-employed

Print/type preparer's name Firm's address and ZIP code

Check if self-employed Phone number EIN

4684

Form 4684
Department of the Treasury
Internal Revenue Service

Casualties and Thefts

- See separate instructions.
- Attach to your tax return.
- Use a separate Form 4684 for each casualty or theft.

OMB No. 1645-0177

2011 AMENDED
Attachment
Sequence No. 26

Name(s) shown on tax return

JACK S. & JOYCE F. KANNERY

Identifying number

123-45-6789

SECTION A—Personal Use Property (Use this section to report casualties and thefts of property not used in a trade or business or for income-producing purposes.)

1 Description of properties (show type, location, and date acquired for each property). Use a separate line for each property lost or damaged from the same casualty or theft.

Property A MAIN HOME AT 457 EAST PENN STREET, LONG BEACH, NY 11561* - ACQUIRED MARCH 15, 19Property B CONTENTS IN HOME BASEMENT - ACQUIRED AT VARIOUS TIMES, PREDOMINANTLY SINCE DAMAGE FROM PRIORProperty C FLOOD IN 2005

Property D

	Properties			
	A	B	C	D
2 Cost or other basis of each property	2 225,000	61,400		
3 Insurance or other reimbursement (whether or not you filed a claim) (see instructions)	3 33,630	716**		
Note: If line 2 is more than line 3, skip line 4.				
4 Gain from casualty or theft. If line 3 is more than line 2, enter the difference here and skip lines 5 through 8 for that column. See instructions if line 3 includes insurance or other reimbursement you did not claim, or you received payment for your loss in a later tax year	4			
5 Fair market value before casualty or theft	5 480,000	53,390		
6 Fair market value after casualty or theft	6 384,000	0		
7 Subtract line 6 from line 5	7 96,000	53,390		
8 Enter the smaller of line 2 or line 7	8 96,000	53,390		
9 Subtract line 3 from line 8. If zero or less, enter -0-	9 62,370	52,674		
10 Casualty or theft loss. Add the amounts on line 9 in columns A through D	10	115,044		
11 Enter the smaller of line 10 or \$100	11	100		
12 Subtract line 11 from line 10	12	114,944		
Caution: Use only one Form 4684 for lines 13 through 18.				
13 Add the amounts on line 12 of all Forms 4684	13	114,944		
14 Add the amounts on line 4 of all Forms 4684	14	0		
15 • If line 14 is more than line 13, enter the difference here and on Schedule D. Do not complete the rest of this section (see instructions).	15	0		
• If line 14 is less than line 13, enter -0- here and go to line 16.				
• If line 14 is equal to line 13, enter -0- here. Do not complete the rest of this section.				
16 If line 14 is less than line 13, enter the difference	16	114,944		
17 Enter 10% of your adjusted gross income from Form 1040, line 38, or Form 1040NR, line 37. Estates and trusts, see instructions. <u>ANTICIPATED FEDERAL LEGISLATION, AS FOR HURRICANE KATRINA, MIDWEST DISASTERS, ETC.</u> <u>IS EXPECTED TO WAIVE THIS DEDUCTION IN LIKE MANNER FOR HURRICANE SANDY</u>	17	0		
18 Subtract line 17 from line 16. If zero or less, enter -0-. Also enter the result on Schedule A (Form 1040), line 20, or Form 1040NR, Schedule A, line 8. Estates and trusts, enter the result on the "Other deductions" line of your tax return	18	114,944		

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 128870

Form 4684 (2011)

* MAILING ADDRESS SHOWN ON FORM 1040X, PAGE 1

** PER FEMA STANDARD FLOOD POLICY, WHICH CONTROLS COMMERCIAL INSURANCE COVERAGE FOR HOMES. BASEMENT CONTENTS ARE LARGELY CONSIDERED NOT INSURED. IN THIS INSTANCE, FINISHED BASEMENT WITH WELL FURNISHED RECREATION ROOM, DEN AND BEDROOM WAS INUNDATED WITH 3 1/2 FEET OF CONTAMINATED OCEAN WATER, SEWAGE BACKUP AND FUEL OIL, RESULTING IN VIRTUALLY ALL FURNITURE AND FURNISHINGS BEING NONSALVAGEABLE.

Form **6251**Department of the Treasury
Internal Revenue Service (53)**Alternative Minimum Tax—Individuals**

OMB No. 1545-0074

2011 AMENDED
Attachment
Sequence No. 32

Name(s) shown on Form 1040 or Form 1040NR

JACK S. & JOYCE F. KANNERY

Your social security number

XXXXXXXXXX**Part I Alternative Minimum Taxable Income (See instructions for how to complete each line.)**

1	If filing Schedule A (Form 1040), enter the amount from Form 1040, line 41, and go to line 2. Otherwise, enter the amount from Form 1040, line 38, and go to line 7. (If less than zero, enter as a negative amount.) (1,73,741 - 14,944)	1	58,797
2	Medical and dental. Enter the smaller of Schedule A (Form 1040), line 4, or 2.5% (.025) of Form 1040; line 38, if zero or less, enter -0-	2	10,586
3	Taxes from Schedule A (Form 1040), line 9	3	75,559
4	Enter the home mortgage interest adjustment, if any, from line 6 of the worksheet in the instructions for this line	4	
5	Miscellaneous deductions from Schedule A (Form 1040), line 27	5	
6	Skip this line. It is reserved for future use	6	
7	Tax refund from Form 1040, line 10 or line 21	7	()
8	Investment interest expense (difference between regular tax and AMT)	8	
9	Depletion (difference between regular tax and AMT)	9	
10	Net operating loss deduction from Form 1040, line 21. Enter as a positive amount	10	
11	Alternative tax net operating loss deduction	11	()
12	Interest from specified private activity bonds exempt from the regular tax	12	
13	Qualified small business stock (7% of gain excluded under section 1202)	13	
14	Exercise of incentive stock options (excess of AMT income over regular tax income)	14	
15	Estate and trusts (amount from Schedule K-1 (Form 1041), box 12, code A)	15	
16	Electing large partnerships (amount from Schedule K-1 (Form 1065-B), box 6)	16	
17	Disposition of property (difference between AMT and regular tax gain or loss)	17	
18	Depreciation on assets placed in service after 1986 (difference between regular tax and AMT)	18	
19	Passive activities (difference between AMT and regular tax income or loss)	19	
20	Loss limitations (difference between AMT and regular tax income or loss)	20	
21	Circumlocution costs (difference between regular tax and AMT)	21	
22	Long-term contracts (difference between AMT and regular tax income)	22	
23	Mining costs (difference between regular tax and AMT)	23	
24	Research and experimental costs (difference between regular tax and AMT)	24	
25	Income from certain installment sales before January 1, 1987	25	()
26	Intangible drilling costs preference	26	
27	Other adjustments, including income-based related adjustments	27	
28	Alternative minimum taxable income. Combine lines 1 through 27. (If married filing separately and line 28 is more than \$223,800, see instructions.)	28	141,942

Part II Alternative Minimum Tax (AMT)

29	Exemption. (If you were under age 24 at the end of 2011, see instructions.)		
	IF your filing status is ... AND line 28 is not over ... THEN enter on line 29 ...		
	Single or head of household \$112,500 \$48,450		
	Married filing jointly or qualifying widow(er) 150,000 74,450		
	Married filing separately 75,000 37,225		
	If line 28 is over the amount shown above for your filing status, see instructions.		
30	Subtract line 29 from line 28. If more than zero, go to line 31. If zero or less, enter -0- here and on lines 31, 33, and 35, and go to line 34	30	74,450
31	• If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter. • If you reported capital gain distributions directly on Form 1040, line 13; you reported qualified dividends on Form 1040, line 9b; or you had a gain on both lines 15 and 16 of Schedule D (Form 1040) (as refigured for the AMT, if necessary), complete Part III on the back and enter the amount from line 54 here. • All others: If line 30 is \$175,000 or less (\$87,500 or less if married filing separately), multiply line 30 by 26% (26). Otherwise, multiply line 30 by 28% (28) and subtract \$3,500 (\$1,750 if married filing separately) from the result.	31	70,492
32	Alternative minimum tax foreign tax credit (see instructions)	32	
33	Tentative minimum tax. Subtract line 32 from line 31	33	16,328
34	Tax from Form 1040, line 44 (minus any tax from Form 4972 and any foreign tax credit from Form 1040, line 47). If you used Schedule J to figure your tax, the amount from line 44 of Form 1040 must be refigured without using Schedule J (see instructions)	34	6,856
35	AMT. Subtract line 34 from line 33. If zero or less, enter -0-. Enter here and on Form 1040, line 45	35	11,472

For Paperwork Reduction Act Notice, see your tax return instructions.

Cat. No. 13600G

Form 6251 (2011)

5/1/13

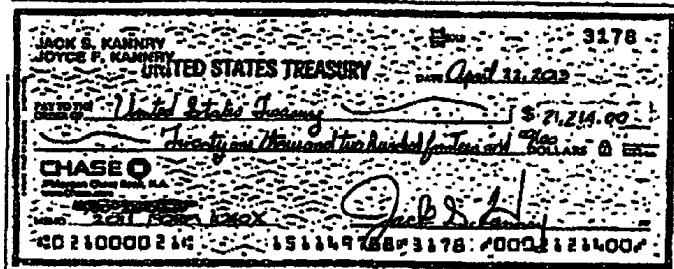
Chase Online

CHASE PREMIER PLAT (...8788)

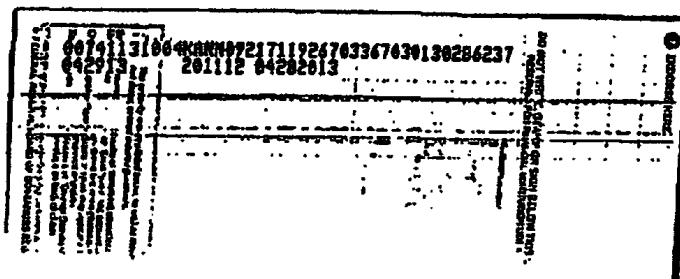
Check Number: 3178

Post Date: 04/30/2013

Amount of Check: \$21,214.00



Need help printing or saving this check?



Need help printing or saving this check?

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29-12 *m*

Internal Revenue Service
 Small Business and Self-Employed
 290 Broadway 5th floor
 New York NY 10007

COPY

JACK S & JOYCE F KANNRY
 515 E 79TH ST PH B
 NEW YORK NY 10075-0781

Department of the Treasury

Date:
 November 14, 2013

Taxpayer Identification Number:
 [REDACTED]

Tax Year:

2011

Form Number:
 1040

Person to Contact:
 J. Washington

Employee Identification Number:
 0245549

Contact Telephone Number:
 212 436-1297

Fax Number:
 212 436-1050

Dear JACK S & JOYCE F KANNRY:

Your federal income tax return for the year shown above has been selected for examination. We examine tax returns to verify the correctness of income, deductions, exemptions, and credits.

WHAT YOU NEED TO DO

Please call the individual listed above **WITHIN 10 DAYS** to schedule an appointment. Please call between the hours of 7:30 am to 4:00 pm, Monday through Friday.

ISSUES TO BE REVIEWED DURING THE EXAMINATION

Your examination will primarily be focused on the following issues:

1. Casualty and Theft Loss (per 1040-X)	4.
2.	5.
3.	6.

WHAT TO BRING WITH YOU TO THE EXAMINATION

Attached to this letter is an Information Document Request that lists the items on your return to be examined and the supporting items you need to provide. Please include complete copies of your 2010 and 2012 individual income tax returns. You should organize your records according to the issues identified above. For additional information see the enclosed Publication 1, *Your Rights as a Taxpayer*, and Notice 609, *Privacy Act Notice*.

KAN346
 Letter 3672 (Rev. 10-2010)

29-13

Office Examiner Forecast and Activity Record	Examining Officer <i>Washine L.</i>	Date assigned (mmddyyyy)
Taxpayer name and address <i>Jack & Joyce Kannanay 515 East 79th Street PHB New York, New York 10075-0781</i>	Representative's name and address	
Business name and address		
Representative has "X" proper box		
Home telephone number () Business telephone number (212) 984-7720	<input type="checkbox"/> Power of Attorney (POA) <input type="checkbox"/> Taxpayer's authorization	
Initial Interview / Closure Forecast: 7 hours	Representative's telephone number ()	

Contacts and Activities

Date (mmddyyyy)	Time Applied	Initials	Remarks, Notes, Actions Taken
11/14/2013	1.0hr	<i>Sw</i>	Prepared lead sheets, workpapers, and focus TDR preclosed. TDR reviewed. TDR income page, too. Tp and spouse filed 1040C for 2011 due to Hurricane Sandy. Claiming casualty loss of home and contents in basement. No pen letter 3572, publication 1, notice 1009 and focus TDR. Copy enclosed..
11/25/2013	1.5	<i>Sw</i>	Tp called to discuss case with Tco. Tco gave name, T.D# and telephone number. According to Tp, he is a very busy lawyer and will need at least 3 weeks to organize documents being requested. Tco requested copy of Tp's 2011 and 2012 Federal tax returns. Tco explained to Tp case will be transferred to another unit once all documentation is sub-

Contacts and Activities — continued

Date (mm/dd/yyyy)	Time Applied	Initials	Remarks, Notes, Actions Taken
11/25/2013	cont	SW	<p>SW stated TP was requesting TCO to come to his office - TCO stated must have permission from supervisor (who is on leave).... TP is claiming loss of home due to Hurricane Sandy during Oct 2012. TCO ask TP did he receive any insurance payments? TP stated he received some insurance payments. TCO ask does he have to provide proof of incident? TCO stated, no he does not! TCO stated TP must show and provide <u>all</u> other documents according to Form 4504. Additional information due on or before <u>12/30/2013</u>.</p>
11/26/2013	cont	SW	<p>TP explained to TP since documents will be reviewed by evaluation must provide <u>all</u> documentation timely as "one package". TCO explained to TP if and when unit makes their determination, report will be sent to either: partial and/or full disallowance of claim. TCO explained to TP, if he disagrees</p>

TOTAL

Form 9984-D (1-7-11)4

Catalog No. 37594T

Workpaper

Department of the Treasury
Internal Revenue Service
WAN583

Contacts and Activities -- continued

Date (mmddyy)	Time Applied	Initials	Remarks, Notes, Actions Taken
11/25/2013	cont	GD	With the findings, he must request case to be transferred to Appeals
12/30/2013	2.0 hrs	GD	Since documents were not received timely, TCo sent letter 569, forms 2297, 9397- Attachment also. TCo did not provide documentation to verify he owned property. Amounts received from insurance company etc. TCo and response will have 30 days to respond. TCo explained to Tp, per telephone conversation, documents must be timely submitted since case must be transferred to another department to complete their research of loss claimed. TCo also explained to Tp once findings are determined by department, report maybe issued on their determination....
1/10/2014	2.5	GD	Worked on data received. Tp submitted documentation requested per telephone conversation. Note: Tp submitted copy of his 2013 tax return to, above.

TOTAL

Form 9984-D (1-2004)

Catalog No. 37594T

Workpaper

Department of the Treasury
Internal Revenue Service
KAN584

Contacts and Activities — continued

Date (mm/dd/yy)	Time Applied	Initials	Remarks, Notes, Actions Taken
1/10/2014	9:01	SW	Loss was not claimed (Total of documents include: Tax of 9...) Form 5202 submitted with documents sent by Fpi. Tco sent all documents - did not make <u>true</u> copies of documents to send. Only copied letter which explains what documents were sent...
			Tco sent copy of Fpi 1040 for this tax year... Spoke to group mng of engineer evaluation department on this day to ask can case be sent to his department. Mr. Herbert S. Siegel stated yes it can be sent... Surge date: 2/28/2014 Tco noted checks from insurance company - Liberty Mutual and insurance policy - Appraisals made... property located in Long Beach, New York.
1/13/2014	1:5	SW	Reviewed case with group mng of evaluation engineering department. Form 3210 enclosed in case file - Followup date 1/31/2014.

TOTAL

Form 9984-D (1-2004)

Catalog No. 37584T

Workpaper

Department of the Treasury
Internal Revenue Service

KAN585

Contacts and Activities — continued

Date (mm/dd/yyyy)	Time Applied	Initials	Remarks, Notes, Actions Taken
1/13/2014	Cont	SPW	Group mgr of evaluation engineering department called and stated SP did not complete form 4684 (line 1F) AGI Total \$423,451.00 TP did not enter 10% of his AGI which is \$42,345.00 which would result in \$72,599.00
1/14/2014	1.0	SPW	Evan Pollard X SPW Evaluation engineer in group mgr (7198) H. Dietrich called and requested TP the following information (1) did TP receive a refund from FEMA? Need a written statement from TP. (2) why didn't he enter 10% AGI? TP stated he felt bill would be passed like other federal legislations from previous disasters. (3) Did he use replacement value or original cost basis of personal property claimed? TP stated he used replacement value. TCO called H. Dietrich and gave him all 3 responses for questions ask. TCO explained
TOTAL			

Contacts and Activities — continued

Date (mmddyy)	Time Applied	Initials	Remarks, Notes, Actions Taken
1/14/2014	1:00	SW	Coit (Do not) until legislation is passed. He must exceed the 10% limitation. He and spouse can file amended return once decision has been made by legislation.
1/17/2014	1:00	SW	Herbert Dietrich called and left message. Requesting invoices and can- celed checks to verify actual amount were incurred and paid for reconstruction of property. TCB left message on TCB answering machine on this day. Laron 886 A sent. Copy enclosed. Purge date: 1/31/2014 Note: TCB called on this day and requested additional information (being requested by IRS) to be put in writing.
2/12/2014	1:00	SW	Tee called and left message - TCB mailed a 5 page letter regarding his case. Tee made copies of it to give to Agent. According to TCB (S) he did not receive a refund from "FEHA".

TOTAL

Contacts and Activities — continued

Date (mmddyyyy)	Time Applied	Initials	Remarks, Notes, Actions Taken
3/12/2014	Cont	SW	(3) did not use the loss deduction ^{100%} of adjusted gross income - Anticipation of federal legislation to be made.
			(3) Personal property - deemed to be non-salvageable
			(4) do not have invoices and/or canceled checks to verify actual amount were incurred and paid for reconstruction of property.
			According to Tp; reconstruction work has not <u>as yet</u> been undertaken.
3/26/2014	5	SW	To met agent Evan Pollard; discuss what items Tp is claiming was damaged due to Hurricane Sandy. Tp is claiming loss of main home cost basis \$225,000 and contents in home basement \$61,400. Agent asked Tp's invoices and/or fee documents submitted show estimate (not actual cost to repair and/or replace items lost). According to RTF starting 2006 tax year, Tp and spouse are using Manhattan Address (which is a pent house, Apartment). Agent ask to
TOTAL			

Contacts and Activities — continued

Date (mmddyyyy)	Time Applied	Initials	Remarks, Notes, Actions Taken
3/06/2014	cont	GW	obtain receipts, invoices, and/or statement to verify actual cost of repairs made to home. Tco explained to agent, per telephone conversation with tp, no repairs were made to home as of yet since he has not receive funds from Lema, and/or full amount from insurance companies and/or any other entities. It was discuss tp must use 10% of agi - so it will be adjustments made to this tax year... 10% of Yrs agi = \$42,345.00
4/15/2014	1:0	GW	Evaluation Agent Evan Pollard called and requested pictures of property. Tco stated tp did not submit any pictures and/or thumb drives, for property. According to agent tp is <u>not</u> cooperating with him. Tco stated tp is <u>not</u> cooperating with me either. Tco stated to appraiser, tp was previously told & explained, once
OTAL			

Contacts and Activities — continued

Date (mmddyyyy)	Time Applied	Initials	Remarks, Notes, Actions Taken
4/15/2014	cont	fw	Appraiser's determination is made, if he disagrees with findings he must write, submit a letter for case to be transferred to Appeals. Tco explained to us, decision is beyond the scope of office audit and this is why documents were sent to evaluation department. When appraiser's determination is made, Tco will send report and other required documents for case...
5/30/2014	.5	fw	Tco called (agent) Evan Pollard to obtain status of case... Tco also sent E-Mail... purge date: 6/16/2014
4/17/2015	.5	fw	Evan Pollard called (Tco emailed and left message) regarding status of case... he stated group mrg has to review his findings and their documents will be forwarded to me: purge date 5/1/2015
4/30/2015	.5	fw	Tco called & says mrg (Herbert Dietrich x 7198) regarding status
TOTAL			

Contacts and Activities - continued

Date (mmddyyyy)	Time Applied	Initials	Remarks, Notes, Actions Taken
4/30/2015	COT	SW	of case - discuss with group re statute date is to be changed case is a claim. When report is issued, too will call tp and discuss findings made by evalua- tion.
5/13/2015	2:0	SW	Tco received findings from TKS Evaluation Department. Case on information, too sent letter 569, forms 2297 and 3363. Tp will have 30 days to respond. If no response, case will be closed <u>6/12/2015</u> . Case was discuss with group re Memo by Appraiser is not to be sent to tp and spouse...
5/26/2015	2:0	SW	Tco sent form 886A, letter 907, form 872, and publication 1035 sent to tp and spouse. Copies enclosed. Tco called tp to inform him form 872 is being sent to extend the statute in order for tp and spouse to have case transferred to Appeals. Tco explained

TAL

m 9984-D (1-2004)

Catalog No 375941

Workpaper

Department of the Treasury
Internal Revenue Service

KAN591

Contacts and Activities - continued

Date (mmddyyyy)	Time Applied	Initials	Remarks, Notes, Actions Taken
5/28/2015	10:17	SW	<p>To Tp, if documents are not signed and returned, case will be closed and he and spouse will loose their Appeal rights. Tco stated Appraiser denied claim. Claim shows tp was trying to reduce from previous balance owed when filing original return... Additional information due on or before 6/18/2015.</p>
6/12/2015	1:51	SW	<p>Tco spoke with Evaluation Dept Group mng - Can Tp receive copy of Tp's Appraiser's findings? Group mng stated Tp can receive memo. Tco sent copy of memo and form 872-A. Copies enclosed. Tp and spouse will have 10 days to respond. Tco also called Tp on this day to inform him Appraiser's findings are being mailed to him today. Tco stated if form 872 is not signed and returned, case will be closed.</p>

OTAL

Form 9884-D (1-71)

Catalog

AT

Workpaper

Department of the Treasury
Internal Revenue Service

KAN592

Contacts and Activities — continued

Internal Revenue Service
Small Business and Self-Employed

Department of the Treasury

Date: May 13, 2015

COPY

JACK S & JOYCE F KANNRY
515 E 79TH ST PH-B
NEW YORK NY 10075-0781

Taxpayer Identification Number:

Form:

1040

Tax Period(s) Ended and Claim Amount:
December 31, 2011

Date Claim Received:

August 28, 2013

Person to Contact:

Judy Washington

Contact Telephone Number:

(212) 436-1297

Employee Identification Number:
0245549

Last date to Respond to this Letter:
June 12, 2015

Dear JACK S & JOYCE F KANNRY:

We examined your claim and propose:

- Partial disallowance, as shown in the enclosed examination report. If you accept our findings, please sign and return the enclosed Form 2297, *Waiver Form* and Form 3363, *Acceptance Form*.
- Full disallowance, as shown in the enclosed examination report or at the end of this letter. If you accept our findings, please sign and return the enclosed Form 2297, *Waiver Form* and Form 3363, *Acceptance Form*.
- Full disallowance with additional tax due, as shown in the enclosed examination report. If you accept our findings, please sign and return the enclosed Form 2297, *Waiver Form* and the examination report.

Note: If your claim involves a joint return, both taxpayers must sign the form(s).

If you are a "C" Corporation filer, Section 6621(c) of the Internal Revenue Code provides for an interest rate 2% higher than the standard interest rate on deficiencies of \$100,000 or more.

If you don't agree with our findings, you may request a meeting or telephone conference with the supervisor of the person identified in the heading of this letter. If you still don't agree with our findings, we recommend that you request a conference with our Appeals Office. If you request a conference, we will forward your request to the Appeals Office and they will contact you to schedule an appointment.

Letter 589 (DO) (Rev. 9-2000)
Catalog Number 41248G

KAN319

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NOTE - Filing this waiver within 6 months from the date the claim was filed will not permit filing a suit for refund before the 6-month period has elapsed unless a decision is made by the Service within that time disallowing the claim.

Catalog Number 18287T

www.fcc.usitres.com

Form 2297 (Rev. 3-1993)

KAN320

Form 3363
(Rev. November 1983)

Department of the Treasury - Internal Revenue Service

Acceptance of Proposed Disallowance of Claim for Refund or Credit

Name(s), SSN or EIN, and address of taxpayer(s) (Number, Street, City or Town, State, ZIP Code)

Jack and Joyce Kantry
515 East 79th Street PHB
New York, New York 10075

Year or Period	Date Claim Filed	Kind of Tax	Amount of Claim	Amount of Claim Disallowed	Amount of Claim Allowed
2011	08/28/2013	Income	\$21,214.00	\$21,214.00	0.00

I accept the proposal of the Internal Revenue Service to disallow the claim(s) to the extent described above. This means only that I do not want the Service to consider the claim(s). It does not waive my right to file suit on the disallowance.

If you file this acceptance for a joint return, both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a partnership with excise or employment tax liability, all partners must sign. However, one partner may sign with appropriate evidence of authorization to act for the partnership.

For a person acting in a fiduciary capacity (executor, administrator, trustee), file Form 58, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

Your Signature	►	(Date)
Spouse's Signature If A Joint Return Was Filed	►	(Date)
Taxpayer's Representative Sign Here	►	(Date)
Partnership/ Corporate Name	►	
Partners/ Corporate Officers Sign Here	►	(Title) (Date)
		(Title) (Date)

JACK S. & JOYCE F. KANNRY
 515 East 79th Street
 New York, NY 10075

May 20, 2015

CERTIFIED MAIL

Internal Revenue Service
 Small Business/Self-Employed Compliance
 North Atlantic Examination, Group 2305
 290 Broadway, 5th Floor
 New York, NY 10007-1867

Attn.: Ms. Judy Washington, Tax Compliance Officer

Re: Form 1040-X for Tax Year 2011
 Casualty & Theft Loss
 S.S. No. [REDACTED]
Appeal from Undisclosed Findings and
Reasons in Claims Denial/Disallowance

Dear Ms. Washington:

We acknowledge receipt of your May 13, 2015 letter, following more than a year of silence, advising that your office "examined [our] claim and propose[s]...full disallowance, as shown in the enclosed examination report or at the end of this letter." Regrettably, no examination report was enclosed and the end of your letter states, on an otherwise blank page, that the reason for disallowance is: "[a]ppraisal department made determination. Based on their findings, your claim has been denied/disallowed." Such appraisal department findings and determination basis have likewise not been disclosed to us.

Notably, at the outset of this intended appeal, we note your enclosed IRS Publication 3498, "The Examination Process", which states under the heading of "Results of the Examination" (p. 4):

If we don't accept your return as filed, we will explain any proposed changes to you.... It is important that you understand the reasons for any proposed changes; don't hesitate to ask about anything that is unclear to you.

Obviously we do not understand *any* of the reasons for your proposed changes, since none were provided in or with your letter.

(889820.1)

KAN331

29-16

Internal Revenue Service
 May 20, 2015
 Page 2

Since your proposed change to tax is \$21,214.00, we note your letter advice (p. 2) that if such proposed change to tax is:

\$25,000 or less for *each* reference tax period, you may send us a letter requesting Appeals consideration, indicating what you don't agree with and the reasons why you don't agree.

This, then, is intended as our letter requesting Appeals consideration.

By way of brief background for Appeals consideration, and assuming that your office will transmit all our previously provided documents to that office, we note that the correspondence from your office comprised an initial examination letter dated November 14, 2013; a January 21, 2014 Form 886-A requesting four additional items of information; an April 9, 2014 IRS appraiser memorandum, requesting photographs; and the current May 13, 2015 claim denial letter. A summary of our correspondence in that period follows:

- December 17, 2013 response letter to November 14, 2013 IRS examination letter, enclosing requested (1) proof property was owned by taxpayer; (2) proof of insurance; (3) insurance claim for casualty; (4) insurance claim reimbursement for casualty; (5) proof of incident; (6) appraisals of fair market value of property before and after casualty; (7) cost of appraisal; (8) cost of clean-up and repairs; and (9) copy of 2012 individual income tax return.
- February 3, 2014 response letter to January 21, 2014 IRS Form 886-A concerning: (1) no FEMA refund; (2) casualty loss deduction issue; (3) basis of personal property or contents loss; and (4) basis of dwelling or building property loss.
- April 16, 2014 response letter to April 9, 2014 IRS memorandum, enclosing requested CD of 118 photographs for building and contents claimed items, supplemented by 50 photographs showing conditions at the premises shortly after the Hurricane Sandy flood.

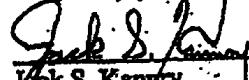
Accordingly, while we recognize the IRS Publication 3498 advice that if, as here, "the examination results in a change to [our] tax liability, [we] may ask [the IRS] to reconsider [our] case...," we cannot do so, since we have not been apprised by your office of the findings/reasons for such tax change. Although we believe that Appeals consideration is the only realistic permitted remedy here, as quoted above from your latest letter, it would certainly be helpful in expediting the process if your office furnished us, in the interim, with the IRS examination report or findings/reasons for the claim denial/disallowance, as is required.

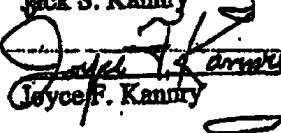
Lastly, it should be remembered that all requested documents and information in support of our 2011 Form 1040-X were fully and timely submitted, and we believe will properly support that amended tax filing on Appeals consideration, whereas in sharp contrast are the IRS undisclosed findings/reasons for denial/disallowance of this claim.

Internal Revenue Service
May 20, 2015
Page 3

We look forward to your prompt submission of this letter and our prior referenced correspondence and enclosures for Appeals consideration and determination, to expedite closure of this matter.

Very truly yours,


Jack S. Kantry


Joyce P. Kantry

(899520.1)

KAN333

**Internal Revenue Service
290 Broadway 5th floor**

Department of the Treasury

Date: May 28, 2015

**Jack S Kannry
Joyce F Kannry
515 East 79th Street PHB
New York, New York 10075**

**Tax Year(s):
201112**

**Taxpayer Identification Number:
130-28-6237**

**Kind of Tax
Income**

**Consent Form Number:
872**

**Person to Contact:
J. Washington**

**Employee Identification Number:
0245549**

**Phone Number:
(212) 436-1297**

Dear Jack S Kannry and Joyce F Kannry:

**The limitation period allowed by law for assessing additional tax on your federal tax return will expire soon.
Therefore, we request that you consent to extend the period for assessment.**

We have enclosed copies of consent Form 872 , which extends the statute of limitation period. Before signing this form, it is important that you understand your rights concerning consents, which are as follows:

- 1) You have the right to refuse to extend the limitation period.**
- 2) You have the right to request the extension be limited to particular issues held open for further examination or appeal.**
- 3) You have the right to request the limitation period be limited to a specific date.**

If you wish to exercise any of your rights mentioned above, please review the enclosed Publication 1035, *Extending the Tax Assessment Period*, for a more detailed explanation of your rights, options, and procedures.

NOTE: You do not have to sign the consent to be considered to have cooperated with the Internal Revenue Service for purposes of determining who has the burden of proof in any court proceeding.

Joint Filers: If the enclosed consent is for a joint return, each individual must sign.

(over)

**Letter 907 (Rev. 1-2006)
Catalog Number 62067X**

29-17

If you agree to the terms in the enclosed consent form, please sign all copies of the consent form and return them in the enclosed envelope within 10 days from the date of this letter.

NOTE: It is important that you sign your name exactly as it appears on Form 872. Upon acceptance, we will return an approved copy for your records.

If you have questions concerning the enclosed form or your rights when extending the statute of limitations, please contact the person whose name and number is shown above. If the telephone number is outside your local calling area, there will be a long distance charge to you. If you choose to write, please provide a telephone number and most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Judy Washington
Tax Compliance Officer

Enclosures:

Copies of consent form
Envelope
Publication 1035

JACK S. & JOYCE F. KANNRY
 515 East 79th Street
 New York, NY 10075

June 1, 2015

CERTIFIED MAIL

Internal Revenue Service
 Small-Business/Self-Employed-Compliance
 North Atlantic Examination, Group 2305
 290 Broadway, 5th Floor
 New York, NY 10007-1867

Attn.: Ms. Judy Washington, Tax Compliance Officer

Re: Form 1040-X for Tax Year 2011
 Casualty & Theft Loss
 [REDACTED]

Appeal from Undisputed Findings and
 Reasons in Claims Denial/Disallowance

Dear Ms. Washington:

This is in response to your May 28, 2015 Form Letter 907, requesting our consent to extend the period for assessment for additional tax, accompanied by your undated Form 886-A, "Explanation of Items", advising that our "1040X filed regarding [our] casualty loss from Hurricane Sandy was denied" and, that, in the absence of signing the Form 872 requested by Appeals, our "case will be closed." We have no inherent problem consenting to the IRS requested extension, provided our right is preserved to challenge any subsequently assessed interest and penalties, for a tax filing made more than two years ago, on April 21, 2013, which will now result in the IRS having another two plus years to administratively consider this matter, until December 31, 2017.

Inasmuch as you have been designated by the IRS as our sole point of contact in this matter, at least to the present, and in each of your writings we have been invited to contact you with questions, we request clarification as to the following:

- Your May 13, 2015 Form Letter 569 enclosed a Form 2297, "Waiver of Statutory Notification of Claim Disallowance" and a Form 3363, "Acceptance of Proposed Disallowance of Claim for Refund or Credit", both of which forms advised as to "Amount of Claim Disallowed" at \$21,214.00. We declined to sign those forms because of their seeming inconsistency with the facts. Our April 21, 2013 filed Form 1040X

KAN363

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Internal Revenue Service
June 1, 2015
Page 2

sought no refund or credit in that or any other amount, but rather showed such amount as the balance of tax owed for 2011, which we concurrently paid (April 22, 2013 Check # 3178, posted to our checking account on April 30, 2013). Thus, at that point in time the taxes for that year were fully paid.

- Your undated Form 886-A, referenced above, appears to now advise that the entire 1040X is denied, based on the appraiser's determination that "the claims are not allowed." In short, that certainly sounds like the IRS has determined that our devastating dwelling and contents loss from Hurricane Sandy is not allowable *at all* but, as noted earlier, without any IRS explanation whatsoever. That is a far cry from your prior advice that a claimed \$21,214.00 was disallowed/denied, and warrants clarification and an explanation of the denial basis.

We also note that fundamental due process requirements, as well as the IRS regulations and explanatory publications, mandate explanations to taxpayers of determinations made, which thus far is the antithesis of what has occurred here. In my (Jack S. Kannry) many years of law practice, I have appeared before innumerable federal and state agencies in administrative proceedings, including the IRS, as well as in federal and state courts in New York and elsewhere in litigation matters, including the U.S. Tax Court. I cannot recall any prior such proceeding where the governmental agency's determination was bereft of any explanation. Indeed, the fact that the IRS has an administrative appeals process for determinations emanating from your office is indicative of the agency's recognition of a taxpayer right of appeal from such determination, which obviously necessitates the taxpayer being apprised of such determination basis *prior to* such appeal.

Lastly, for now, your latest letter enclosed IRS Publication 1035, "Extending the Tax Assessment Period", which provides under "Your Available Options" (p.2), that upon being asked to sign the consent extending the statutory period, one such taxpayer option is to "[n]egotiate consent terms." We believe that such option is appropriate in this somewhat confusing situation, where we are unable to determine whether the IRS is challenging an amount of \$21,214.00 or the entire filed 1040X for 2011. We request that you forward this request to whomever in your office is authorized to negotiate such consent terms, to expedite completion and execution of the requested time extension consent form.

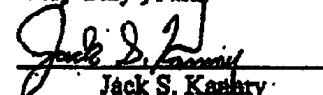
As with our prior correspondence with your office, since the permitted appeals process applicable here has yet to be clearly defined, this letter should be included in that record. If it turns out that we are required to "submit a formal protest", as is mentioned as a possibility in your earlier letter, we note that your previously furnished Publication 3498 (p.6) includes a requirement in that procedure that the taxpayers include "[a] list of the charges that you do not agree with, and why you do not agree." Again, that underscores the necessity of an explanation by the IRS as to the specifics of the subject claim denial by your office.

KAN364

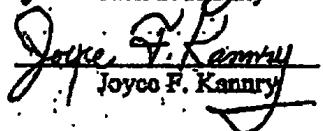
Internal Revenue Service
June 1, 2015
Page 3

Your early attention to expedite this process will be greatly appreciated.

Very truly yours,



Jack S. Kannry



Joyce F. Kannry

KAN365

Extending the Tax Assessment Period



Department of the Treasury
Internal Revenue Service

www.irs.gov

Publication 1035 (Rev. 05-2007)
Catalog Number 46890Q

Background

The Internal Revenue Service (Service) makes every effort to examine tax returns as soon as possible after they are filed. To ensure timely tax examinations, Congress has set deadlines for assessing taxes and making refunds or credit of tax. These deadlines are called "statutes of limitations." Without statutes of limitations, a tax return could be examined and tax assessed, refunded, or credited at any time, regardless of when the return was filed.

Assessment statutes of limitations generally limit the time the Service has to make tax assessments to within three years after a return is due or filed, whichever is later. The Service cannot assess additional tax after the time for assessment has expired under any statute of limitations (even if the Service discussed the need for a tax adjustment with you before the expiration). Statutes of limitations also limit the time you have to file a claim for credit or refund. The Service is legally prohibited from making a refund or credit for your claim if you file it after the time for filing has expired under the statute of limitations. Also, if you disagree with the return examination findings, we cannot provide you with an administrative appeal within the Service unless sufficient time remains on the statute of limitations. Because of these restrictions, the Service identifies tax returns under examination for which the statutory period for assessment is about to expire and requests that you extend the assessment statute of limitations. This additional time allows you to provide further documentation to support your position, request an appeal if you do not agree with the examiner's findings or to claim a tax refund or credit. The extended assessment statute allows the Service time to properly complete the examination of the tax return and to make any additional assessment or reduction in the previously assessed tax liability that is required.

Congress, recognizing that additional time may sometimes be needed to fairly resolve a tax examination, has provided for extending the statutory period by written agreement between you and the Service. These agreements are called "consents" and generally apply to all taxes except estate tax. To provide consistency, the Service has developed forms for the written consents. The signed consent form is considered to be binding on you and the Service.

There are two basic kinds of consents: the fixed-date consent and the open-ended consent. The fixed-date consent sets a specific expiration date for the extension of the statute, while the open-ended consent extends the statute for an indefinite length of time.

Length of Extension

The Service's examiners will request an extension period no longer than is necessary to complete the examination and any administrative action necessary

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to process your case. As stated above, the Service uses two kinds of consents to accomplish this, a "fixed-date" and an "open-ended" consent. Fixed-date consents expire on the date specified in the consent. Once the original date under the statute of limitations is extended by a signed consent, it may be further extended by the mutual agreement of the parties before the expiration date of the previous extension period. The fixed-date consent is used for most examination and appeal activities. The principal forms used are Form 872, *Consent to Extend the Time to Assess Tax*, Form 872-B, *Consent to Extend the Time to Assess Miscellaneous Excise Taxes*, or Form SS-10, *Consent to Extend the Time to Assess Employment Taxes*.

In an open-ended consent, the extension period generally remains open until 90 days after either the taxpayer or the Service sends the prescribed notice ending the agreement. The procedures for using this consent are set forth in Revenue Procedure 78-22, 1978-1 C.B. 563, which may be obtained by calling the Internal Revenue Service at 1-800-829-1040 if the tax return being examined is one of the Form 1040 series of returns (for example, Form 1040, Form 1040A, Form 1040EZ) or 1-800-829-4933, if any other type of return is being examined. The open-ended consent may be used for cases placed in suspense, scheduled for appeals or other situations where it would be advantageous to both you and the Service to do so. Form 872-A, *Special Consent to Extend the Time to Assess Tax*, is used for agreeing to an open-ended assessment period. However, Form 872-A may not be used for employment taxes or certain miscellaneous excise taxes.

Restricted Consents

In addition to extending the length of the assessment statutory period, consent agreements may also limit further examination or appeal activities to specific tax issues. These agreements are called "restricted consents" and have either a fixed or open-ended date of expiration. It is the Service's position that the taxpayer has a right to request a restricted consent; however, as a general rule, the Service will not enter into restricted consents unless all of the following conditions exist:

- 1) The number of unresolved issues that must be covered by the restricted consent does not make it impractical to do so.
- 2) The scope of the restrictions must be clearly and accurately described for all the unresolved issues.
- 3) The issues not covered by the restricted consent are agreed and provision is made for assessing any deficiency or, under certain circumstances, scheduling any over-assessment (refund or credit) for the agreed issues.

- 4) The appropriate Service official approves the use of a restricted consent.
- 5) The terms and language in the restricted consent are approved by IRS Counsel prior to the consent being signed by the parties.

A restricted consent is used to allow the assessment statute to expire on the normal or previously extended statute expiration date with regard to items on the return except those covered by the restrictive language. The consent should be prepared by the Service, and not by the taxpayer or the taxpayer's representative. The restrictive statements are to be typed on the consent form to ensure legal validity and to ensure you and the Service are aware of any restrictions. If the restrictions will not fit on the consent form, a reference will be made on that form to an attachment. The Service office examining your return, is responsible for preparing the restrictive language and must obtain approval of IRS Counsel as to its legal sufficiency. If you wish to add or amend restrictions to a consent form submitted to you for your signature, please discuss your request with the Service employee requesting the consent and the Service generally will prepare a new consent form.

Your Available Options

When asked to sign the consent extending the statutory period, you have three options with rights and alternatives for each. You have the right to:

- Sign an unconditional consent (a fixed-date or open-ended consent that does not limit the examination or appeal activities to specific issues). This provides the Service the same assessment authority and you the same appeal opportunities as available under the original statutory period of limitations.
- Please note that the Service may examine any issues relevant to your tax return and make any required tax assessment during the extended statutory period.
- Negotiate consent terms. The Internal Revenue Code does not specify the length of the extension period, or the extent of examination or appeal activities. This flexibility allows you and the Service to negotiate the tax issues covered by the consent and/or the length of the extension period. During any discussions, factors such as the number, type and difficulty of issues, whether issues that are not covered by the consent are agreed, etc., will be considered. Both you and the Service must agree to the terms of the consent and sign the consent form before it becomes effective.

KAN292

- Refuse to sign the consent - Taxes other than employment and certain miscellaneous excise taxes. If you choose not to sign the consent, we will usually take steps that may ultimately allow us to assess any tax we determine to be due. These steps begin with the issuance of a notice of deficiency (see Notice of Deficiency, below, for explanation). This notice neither requires that you make an immediate payment, nor that you immediately take your case to the Tax Court. The notice gives you 90 days (150 days if the notice was addressed to a person outside the United States) to either agree to the deficiency or file a petition with the United States Tax Court for a redetermination of the proposed deficiency. If you petition the Court, you will generally have the opportunity for a pretrial settlement. If agreement cannot be reached, the case will be heard in court. Whether or not you signed a consent to extend the assessment statute of limitations will have no bearing on who has the burden of proof in any court proceeding.

If you don't agree and don't file a petition during the 90-day or 150-day period, the amount shown in the notice of deficiency will be assessed and you must make arrangements for payment. Under no circumstances will a penalty be charged for not signing the consent to extend the assessment statute of limitations.

As an alternative, you can pay the disputed amount of tax and file a claim for refund. The claim must be filed within the period of limitations for filing claims; however a timely filed claim can be examined, reviewed, and appealed after the period for filing claims has expired. Of course, if you wish, you can take your case to the United States District Court or the United States Court of Federal Claims within the period specified by Internal Revenue Code Section 6632. That section requires that you wait at least six months after filing your claim with the Service before you may file suit, and also requires you to file the suit within two years of receiving a notice that your claim has been disallowed.

- Refuse to sign the consent - Employment and certain miscellaneous excise taxes. If you choose not to sign the consent extending the period of limitations for employment taxes or certain miscellaneous excise taxes, we will normally assess the additional tax. Generally, your only recourse is to pay the additional tax when assessed. You may then file a claim for refund within the applicable statutory period of limitations, and upon our disallowance of the claim or six months from the date the claim is filed, file suit in a United States District Court or the United States Court of Federal Claims. A refund suit must be

filed no later than two years from the date of the mailing by the Service of the notice of claim disallowance, unless you and the Service agree in writing to extend the period for filing suit. Form 907, Agreement to Extend the Time to Bring Suit, is generally used for this purpose. (Note, however, that if you execute a written waiver of this notice requirement, the two-year period runs from the date the waiver is filed. A waiver is generally executed on Form 2297, Waiver of Statutory Notice of Claim Disallowance). We will consider a claim for abatement of the assessment of employment taxes or certain miscellaneous excise taxes if a jeopardy assessment (see Jeopardy assessment, below) is involved or you establish a meritorious reason for the Service to consider the claim for abatement.

Additional information concerning your appeal rights is contained in Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*. Appeal procedures for adverse determinations in Tax Exempt and Government Entities Division cases are explained in Notice 402, and Publication 892. Copies of the publications and notice are available from the Internal Revenue Service, free of charge, by calling 1-800-829-3878.

Notice of Deficiency

If the Commissioner determines there is a deficiency of income, estate, gift, or certain miscellaneous excise taxes, the law authorizes the Commissioner to send notice of such deficiency to the taxpayer by certified or registered mail. Certain Service officials are authorized to issue these notices for the Commissioner of Internal Revenue. The notice is not an assessment of tax. It is a proposed deficiency and gives you 90 days (150 days if the notice was addressed to a person outside the United States) to either agree to the deficiency or file a petition with the United States Tax Court for a redetermination of the deficiency. But once the notice of deficiency is issued, the 90 or 150-day period cannot be suspended or extended. The notice of deficiency can be rescinded under certain circumstances if both parties agree.

Jeopardy Assessment

Jeopardy assessments are made when the Service believes that collection of a proposed deficiency will be endangered if we follow our regular procedures (see Internal Revenue Code Section 6881). Jeopardy assessments are used sparingly and only when necessary to protect the government's interest. Each jeopardy assessment must receive the approval of a designated Service official. In addition, written approval from IRS Counsel (or delegate) is required.

Jeopardy assessments will be made only if one or more of the following conditions exist:

- 1) The taxpayer is, or appears to be, planning to depart the United States quickly or to conceal himself/herself.
- 2) The taxpayer is, or appears to be, planning to place his/her property (including retirement plans) beyond the reach of the government by removing it from the United States, concealing it, dissipating it, and/or transferring it to another person; or
- 3) The taxpayer's financial solvency is or appears to be impaired. (This does not include investigations where the taxpayer becomes insolvent by the accrual of the proposed assessment of tax, penalty, and interest.)

The Service will promptly consider a taxpayer's written request for administrative review of the decision that collection of the tax was in jeopardy, or that the amount of the assessment was excessive.

Note: Jeopardy assessments are not made because the period of limitations for assessing the tax is about to expire or because a taxpayer does not consent to extend the statutory period, unless the collection of the tax deficiency is in jeopardy for the reasons described above.

Interest

Generally, interest continues to accrue on any balance due until full payment is made, including the time for appeal within the Service or the courts. However, for individual taxpayers, interest on an income tax deficiency will stop accruing under certain conditions after 18 months (36 months if the Service notifies you of the additional tax liability after November 26, 2007) from the later of the return due date or the date of filing if filed under a valid filing extension and will start accruing again if payment is not timely made after the Service notifies you of the additional tax liability. Also, a cash deposit may be made to stop the accrual of interest. For information on cash deposits, please contact the Service employee requesting the consent.

Summary

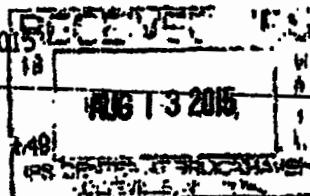
This publication gives general information about the consent process and options available to you should the Service ask you to extend the statutory period of limitations. Specific questions should be addressed to the Service employee requesting the consent.

KAN294

JACK S. & JOYCE F. KANNRY
 515 East 79th Street
 New York, NY 10075

August 10, 2015

CERTIFIED MAIL



Internal Revenue Service
 P.O. Box 9002
 Holtsville, NY 11742-9002

Re: Disagreement with July 27, 2015
 Notice CP22E
 2011 Form 1040 Changes

Gentlemen/Ladies:

Your July 27, 2015 Notice CP22E, a duplicate copy of which was received by each of us, and with which we disagree, initially contends that "[a]s a result of your recent audit, we changed your 2011 Form 1040. Please see your copy of the audit report for a detailed explanation of the changes." As a threshold matter, no such "audit report" was enclosed, nor previously furnished by your office.

Our Taxpayer Rights

In that connection, and with respect to the points that follow, we note that you did, however, enclose Publication 1, "Your Rights as a Taxpayer, The Taxpayer Bill of Rights". We respectfully submit that such "rights" have been honored in the breach by both your office and that of the IRS Small Business/Self-Employment Compliance, North Atlantic Examination office in New York ("SB/SE office"), which was assigned to this matter in August 2013 until, apparently, your July 27, 2015 Notice CP22E.

Specifically, among those "Taxpayer Bill of Rights" are "1. The Right to be Informed"; which is to include "clear explanation of the outcomes" of IRS decisions; "2. The Right to Quality Service", including the right "to receive clear and easily understandable communications from the IRS"; "4. The Right to Challenge the IRS's Position and be Heard", including the right "to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.); and "5. The Right to Appeal an IRS Decision in an Independent Forum", including entitlement "to a fair and impartial administrative appeal of most IRS decisions." We respectfully request that your office keep those taxpayer rights in mind as they relate to the points that follow.

(899739.1)

KAN604

29-20

Internal Revenue Service
 August 10, 2015
 Page 2

The SB/SE Two Years Saga

By way of brief background, the genesis of this matter occurred when, following the timely filing of our 2011 Form 1040 on October 15, 2012, our main home was struck by Hurricane Sandy on October 29, 2012, necessitating an April 21, 2013 filing of an amended Form 1040X for the severe casualty loss caused by this federally declared disaster. More than six months later, by letter dated November 14, 2013, we were informed by the SB/SE office that our Form 1040X had been selected for its examination as to such casualty loss.

There followed extensive phone conversations and our confirming November 22, 2013 letter as to the required information/documentation to SB/SE examining officer Judy Washington, the point of contact designated by that office throughout, and our December 17, 2013 follow-up letter response to all items of SB/SE inquiry to that time, and prior to the required submittal date. Nonetheless, Ms. Washington saw fit to transmit a December 20, 2013 letter (Form 569) advising as to full disallowance of our claim, without any explanation, other than lack of property ownership documentation and insurance company statements to verify casualty loss payments received. In point of fact, such information and documentation had been provided with our earlier noted submission. Moreover, that SB/SE claim denial letter enclosed a Form 3363, Acceptance of Proposed Disallowance of Claim, showing the amount of such claim disallowance to be \$21,214.00, without a word of explanation, which amount bore no relationship to all or any specific items of claimed deduction in our filed Form 1040X.

Upon receipt of those nonfactual writings, a December 24, 2013 phone call to the supervisor for Ms. Washington, Sarah Otero of the SB/SE, appeared to get the matter back on track for substantive consideration by that office.

During the next several months in early 2014, we provided the SB/SE office with all further requested information and documentation, including a CD of 118 photographs of building and contents claimed items of loss, plus hard copies of a further 50 photographs showing the moisture and mold ravages of 3½ feet of ocean surge, sewage backup and fuel oil throughout the residence, caused by Hurricane Sandy.

However, there then followed a period of silence from the SB/SE office of more than a full year, at which time we received an SB/SE letter, virtually identical to the earlier denial letter, this time dated May 13, 2015, again inexplicably showing a claim denial of \$21,214.00 with an incredible indicated "Reason for Disallowance" being that "Appraisal department made determination. Based on their findings, your claim has been denied/disallowed." Nothing more, as to even a hint of what those findings comprised.

Shortly thereafter, Ms. Washington, now designated as tax compliance officer, advised in a May 28, 2015 letter (Form 907), that we needed to execute Form 872 to extend the tax assessment statute of limitations period, and in an undated "Explanation of Items" Form 886-A, received June 10, 2015, that failure to sign such form would result in the case being closed rather than forwarded to the Appeals Office. That last transmittal also enclosed a memorandum of the

Internal Revenue Service
 August 10, 2015
 Page 3

SB/SE appraiser's findings, dated April 30, 2015, which Ms. Washington had previously refused to furnish. Since that was apparently the final word from the SB/SE office on this matter, it then appeared pointless to substantively response to those appraiser's findings, with which we vehemently disagree. However, noteworthy in that findings memorandum is a conclusion that the entire claimed 1040X deduction is denied, which would be absolutely inconsistent with the prior two SB/SE writings noted earlier, in which we were requested to sign a consent form as to a total deduction disallowance of \$21,214.00!

In our final letter to the SB/SE office, dated June 15, 2015, we noted the unresponded to items, the clarification of which would have enabled us to consent to a tax assessment extension and the matter to be considered by the Appeals Office. No response was thereafter forthcoming from the SB/SE office.

Disagreement as to Unexplained Items by Your Office

Instead, the response to that last writing was an apparent referral back of the matter by SB/SE to your office and the issuance of the July 27, 2015 CP22E notice of amount due, as to which payment is demanded. Separate and apart from the incredible two years scenario with SB/SE, and our continued willingness to consent to a time extension for assessment, as noted above, your latest notice raises several further issues, as follows, in the absence of any explanation accompanying such notice.

We are certainly entitled to know the manner and basis of determination for each of the four categories of demanded payment, i.e., "Account balance before this change", "Increase in tax", "Increase in failure to pay penalty"¹ and "Increase in interest"², none of which we are able to reconcile from the differing amounts on pages 2 and 4 of your notice, nor in relation to the previously filed Forms 1040 and 1040X, let alone from the prior SB/SE writings.

Consequently, we would appreciate your early clarification of the above, as well as your advice as to whether the Appeals Office option is still open, since the current statutory assessment period remains unexpired and, with proper explanation and understanding of our unanswered queries upon the SB/SE office, we would have no problem in consenting to such extension.

¹ Both the failure to pay and interest charges asserted in the CP22E notice from your office are time-based, and include the year of silence from the SB/SE office during its consideration of this matter, which we believe to be inappropriate charges. To be sure, there are additional grounds for failure to pay penalty removal, which we will address in a separate writing, following the response from your office as to the points raised in this letter, and our ability to then determine the appropriate forum for such further communications.

² Same as Footnote 1.

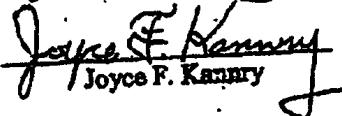
Internal Revenue Service
August 10, 2015
Page 4

Your early attention would be very much appreciated to expedite closure of this overly protracted matter.

Very truly yours,



Jack S. Kannry



Joyce F. Kannry



PO Box 400
Holtsville NY 11742

add in mail 2/2
In reply refer to: 0166421747
Feb. 23, 2016 LTR 86C 0
130-28-6237 201412 30
00000855
BODC: SB

JACK S & JOYCE F KANNRY
515 E 79TH ST PH B
NEW YORK NY 10075-0781



118687

Taxpayer identification number: 130-28-6237
Tax periods: Dec. 31, 2011 Dec. 31, 2012
Dec. 31, 2013 Dec. 31, 2014
Form: 1040

Dear Taxpayer:

Thank you for your correspondence of Oct. 22, 2015.

We are sending your correspondence to the office at the address listed below. That office is now responsible for collecting the amount you owe on your account and will contact you regarding your inquiry. It is in your best interest to fully pay the amount you owe or make as many payments as possible to minimize the interest and penalty we charge after the original due date.

That office will contact you within 60 days.

If you need forms, schedules, or publications, you can obtain them by visiting the IRS website at www.irs.gov or by calling toll-free at 1-800-TAX-FORM (1-800-829-3676).

If you have questions, you can call us at 1-800-829-3903.

If you prefer, you can write to us at the address at the top of the first page of this letter.

When you write, include a copy of this letter and provide in the spaces below your telephone number with the hours we can reach you. Keep a copy of this letter for your records.

Telephone number () _____ Hours _____

Thank you for your cooperation.

N-4

29-21

0166421748
Feb. 23, 2016 LTR 86C 0
130-28-6237 201412 30
00000856

JACK S & JOYCE F KANNRY
515 E 79TH ST PH B
NEW YORK NY 10075-0781

Sincerely yours,
Karen Esposito

Karen Esposito, Operations Mgr.
Collections

Enclosures:
Envelope



To: Internal Revenue Service
PO Box 8208
Drop Point 4-Q26.132
Philadelphia, PA 19101
128487

Rec'd in mail 3/17/14

IRS Department of the Treasury
Internal Revenue Service
CCP-LU ACS CORRESPONDENCE
P.O. BOX 145566, STOP 8136 CSC
CINCINNATI, OH 45250-5566

CERTIFIED MAIL

9307110756602324304478

Letter Date: 03/10/2016
Taxpayer Identification Number:
XXX-XX-6237
Person to Contact:
P.A. BELTON
Contact Telephone Number:
(800) 829-3903
Employee Identification Number:
21-08BROO

JACK S & JOYCE F KANNRY
515 E 79TH ST PH B
NEW YORK, NY 10075-0781

00423

Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320

Dear JACK S & JOYCE F KANNRY

We filed a Notice of Federal Tax Lien on 03/10/2016.

Type of Tax	Tax Period	Assessment Date	Amount on Lien
1040	12/31/2014	12/07/2015	32281.77
1040	12/31/2011	12/17/2012	.00
1040	12/31/2011	07/27/2015	59074.93
1040	12/31/2013	12/08/2014	15078.53
1040	12/31/2012	12/09/2013	14001.89

NOTE: Please contact the person whose name and telephone number appears on this notice to obtain the current amount you owe. Additional interest and penalties may be increasing the amount on the lien shown above.

A lien attaches to all property you currently own and to all property you may acquire in the future. It also may damage your credit rating and hinder your ability to obtain additional credit.

You have the right to a hearing with us to appeal this collection action and to discuss your payment method options. To explain the different collection appeal procedures available to you, we have enclosed Publication 1660, Collection Appeal Rights.

You must request your hearing by 04/18/2016. Please complete the enclosed Form 12153, Request for a Collection Due Process or Equivalent Hearing, and mail it to:

Internal Revenue Service
IRS-ACS/CDP
P.O. BOX 42346
PHILADELPHIA, PA 19101-2346

Letter 3172 (DO) rev. (3-2006)
Catalog No. 267671

29-2

Form 668 (Y)(c) (Rev. February 2004)	1872	Department of the Treasury - Internal Revenue Service Notice of Federal Tax Lien		
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Area: SMALL BUSINESS/SELF EMPLOYED AREA #1 (800) 829-3903	Serial Number 201095516	For Optional Use by Recording Office
<p>As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.</p>		
<p>Name of Taxpayer JACK S & JOYCE F KANNRY</p>		
<p>00423</p>		
<p>Residence 515 E 79TH ST PH B NEW YORK, NY 10075-0781</p>		
<p>IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).</p>		

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2011	XXX-XX-6237	12/17/2012	01/16/2023	
1040	12/31/2011	XXX-XX-6237	07/27/2015	08/26/2025	
1040	12/31/2012	XXX-XX-6237	12/09/2013	01/08/2024	59074.93
1040	12/31/2013	XXX-XX-6237	12/08/2014	01/07/2025	14001.89
1040	12/31/2014	XXX-XX-6237	12/07/2015	01/06/2026	15078.53
					32281.77
Place of Filing					
Register Office New York County New York, NY 10038					Total 1210437.12

This notice was prepared and signed at MANHATTAN, NY, on this,

the 01st day of March, 2016.

Signature <i>Cheryl Corders</i> for P.A. BELTON	Title ACS SBSE (800) 829-3903	21-00-0008
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(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien
Rev. Rul. 71-466, 1971-2 C.B. 409)

Part 3 - Taxpayer's Copy

CAT. NO 60025X
Form 668 (Y)(c) (Rev. 02-04)

Case Activity Record Print

TP	KANNRY, JACK S & JOYCE F 616 E 78TH ST PH B	WUNO 071845-020	Source SC	DQ	Part 1
DKTNO	NEW YORK, NY 10075-0781	TIN [REDACTED]	Group	AO Lee, June L	
KEYTP	DC Office	MFT 30	Type	DPLN Assigned 05/12/2016	
TP PHONE	(212) 984-7720	Features		Requested 04/13/2016	
REP		Attorney		Received 05/03/2016	
		KEYTIN		Created 05/11/2016	
		REP		KEYPER 201112	
		PHONE			

Case Activity Records
Total Time: 4.60

Exhibit No. 10 - R

Date	Action	Hours Completed	Follow-Up/ Notes	Docket No.
05/13/2016	- EC	0.00	[SYSTEM] eCase found new ACS information for this case.	19091-16c
05/23/2016	CR - NR	0.00	[SYSTEM]	
05/23/2016	VA	0.00	[Lee, June L (8284)] TPName: KANNRY, JACK S & JOYCE F TIN: [REDACTED] MFT: 30 Tax Period: 201112N STATDATE: 'Blank' STATCODE: 'SUSP' Tax Period: 201212N STATDATE: 'Blank' STATCODE: 'SUSP' Tax Period: 201312N STATDATE: 'Blank' STATCODE: 'SUSP' Tax Period: 201412N STATDATE: 'Blank' STATCODE: 'SUSP'	
05/23/2016	NP	0.00	[Lee, June L (8284)] In accordance with RRA 98; I confirm I have had no prior involvement with this taxpayer in either Appeals or any other IRS function for the types of taxes and tax years associated with this CDP case.	
05/23/2016	AN	0.25	[Lee, June L (8284)] Rec'd & reviewed case, verified CSED. The collection period allowed by statute to collect these taxes has been suspended by the appropriate computer codes for the tax periods at issue. TC520 cc76 dated 04/13/2016, timely and was input correctly.	
06/09/2016	AN	1.50	[Lee, June L (8284)] Rec'd & reviewed case, verified CSED. The statutory periods of collection were suspended. Pulled prints. There was no Power of Attorney on file. The Settlement Officer added the taxpayers' phone number to the case summary card. F12153-A was reviewed. Per ACS history - ACS did not attempt to contact the taxpayers because they requested for the lien to be withdrawn. The Settlement Officer assigned to this case has no prior involvement either in Compliance or Appeals concerning the applicable tax periods and issues involved in this CDP case. F12153 signed & rec'd on 04/13/2016. Postmark date is 04/11/2016. L3172 is in the case file dated 03/10/2016 due by date 04/18/2016. TC582 dated 03/04/2016. TC520 cc76 dated 04/13/2016 and was input correctly. Taxpayers are compliant. They have an extension for tax year 2016 thru 10/16/2016. Also, they made \$12,000.00-cr for estimated tax payments for tax year 2016. They are raising the issue of the lien. They stated that they did not receive the SNOD. Their returns were self-assessed returns and SNOD was not needed/mailed. Balance due is the result of insufficient withholdings and no estimated tax payments for tax years 2011, 2013, and 2014 and insufficient withholdings and not enough estimated tax payments for tax year 2012. Total tax liability is \$132,748.40 as of 05/30/2016 for tax years 2011 thru 2014. Taxpayers did not propose a collection alternative. They previously had an Installment Agreement default 02/09/2011 for new module terminated on 04/18/2011 to pay \$1,000.00 on the 15th day of each month. Form 433A is needed. Taxpayers have EIN [REDACTED] for Jack S Kanny. Legal & Administrative Procedures Met-Review of Form 1040 reflects proper assessment was made, proper mailing of notice and demand, and there was a balance due when the CCP notice was issued.	
06/09/2016	CO - UAL	0.00	[Lee, June L (8284)] Date Generated: 05/09/2016 UAL: 4837 - Substutive Contact: UAL Sent To: Taxpayer Address: JACK S & JOYCE F KANNRY 616 E 78TH ST PH B NEW YORK, NY 10075-0781 CC: none Enclosure(s): none	
06/09/2016	CO - OT	0.50	(7/28/2016 [Lee, June L (8284)] (7/28/2016 Sent L4837 to the taxpayers requesting signed Form 433A by 08/28/2016. Conference is scheduled for 07/28/2016 at 12 noon CST.)	
06/28/2016	CO - OT	0.25	[Lee, June L (8284)] Received correspondence from the taxpayers requesting for the lien to be withdrawn. They stated that they never received a Statutory Notice of Deficiency. Their returns were self-assessed returns. There was an exam assessment on tax year 2011 with code 3 as agreed. The taxpayers would not get a SNOD when they agreed to the assessment. They do not qualify for the lien to be withdrawn. Their balance due is over \$130,000.00. They are not in compliance with making estimated tax payments for tax year 2016. They did not provide signed Form 433A as requested. They do not want to discuss collection alternative. They did not propose a collection alternative.	
07/28/2016	CF - PC	0.50	[Lee, June L (8284)] I called the taxpayers on 07/28/2016 at 12 noon and introduced myself along with giving him my ID number. I asked if they received and understood Pub	

4227. He stated that did receive the pub and did not have any questions. I explained that I am conducting a hearing that they requested. I explained my role as a Settlement Officer in resolving tax controversies on a basis that is fair and impartial to both the taxpayer and the government. I informed him that Appeals is separate from any other agency and we work independently. I informed him that they are entitled to a conference with an individual who has no prior involvement with the tax periods and issues. I informed him that the IRS has followed all applicable law and administrative procedures. I informed him that we are to discuss the timely lien issues. I informed him that the lien was filed in order to protect the government's interest when the assessed taxes are \$10,000.00 or more. The lien will be released once the total tax liability is paid in full or the collection statute expires, whichever comes first. Taxpayer stated that they disagreed with the lien because they did not receive the Statutory Notice of Deficiency. I explained that their tax return was a self-assessed return where they did not have enough withholdings or estimated tax payments which resulted in the balance due. I informed the taxpayers that their total liability for tax years 2011 thru 2014 is over \$130,000.00. I informed them in order to release/withdraw the NFTL, they would have to establish a Direct Debit Installment Agreement where the balance is under \$25,000.00 and they have at least three consecutive payments drafted out of their bank account. Then they could contact the Internal Revenue Service to request for the lien to be withdrawn at that time. I informed the taxpayers that they did not provide any information to meet the conditions to release or withdraw the NFTL. The lien was filed appropriately and will remain in place until the requirements for issuance of release have been met. The filing of the Notice of Federal Tax Lien is sustained in full. I informed the taxpayers that I will issue them a Determination Letter. I asked if he had anymore questions, and he said no. Taxpayer stated that he was an attorney, and would take this case to court if need be. He stated that he did not want to discuss collection alternatives. He just want the lien to be removed so it won't affect his credit scores.

07/26/2016 DM	0.25	[Lee, June L (6264)] Taxpayers did not want to discuss collection alternatives. They requested the lien to be withdrawn. They did not provide any information to meet the conditions to release or withdraw the NFTL. I informed them in the conference held on 07/26/2016 that the lien is sustained. Therefore, I made a determination to sustain the lien action.
07/26/2016 CM	1.25	[Lee, June L (6264)] Prepared F5402c, Determination Letter/Attachment, and closing documents.
07/26/2016 VA	0.00	[Lee, June L (6264)] TPName: KANNRY, JACK S & JOYCE F TIN: [REDACTED] MFT: 30 Tax Period: 201112N STATDATE: 'Blank' STATCODE: 'SUSP' Tax Period: 201212N STATDATE: 'Blank' STATCODE: 'SUSP' Tax Period: 201312N STATDATE: 'Blank' STATCODE: 'SUSP' Tax Period: 201412N STATDATE: 'Blank' STATCODE: 'SUSP'
07/26/2016 AC - FR	0.00	[Lee, June L (6264)]

Batch # 415637110

CDP HISTORY SHEET	
Name Control KANN	TIN [REDACTED]
Taxpayer Name JACK S & JOYCE F KANNRY	TP Phone # (917) 754-6899
MFT 30 Tax Periods 2011,2012,2013,2014	IRS Received Date 04/13/2016
POA [REDACTED]	POA Phone # [REDACTED]
Employee Received Date 04/15/2016	IDRS Profile # 0569028369

CIRCLE ALL THAT APPLIES:

CDPLN	CDPLV	EHLN	EHLV	PREMATURE	UNSIGNED
STATEMENT OF PROBLEM					

Received form 12153, IRS received dated 04/13/2016, ACS dated 04/14/2016, CDP dated 04/15/2016. Archived on ACS. Form 12153 signed by both taxpayers for a timely hearing request for lien issued on 2011,2012,2013,2014. Lien withdrawal checked with explanation: NFTL should not have been filed, as being premature and not in accordance with statutory requirements. Other reason attached in 3 page explanation why lien should not have been issued and that

REQUIRED ACTIONS TAKEN		
<input type="checkbox"/> Verify CDP Tracking & IDRS Control		
<input type="checkbox"/> DI/ACS Web Updated		
<input type="checkbox"/> ALB Print		
DATE	FOLLOW UP	
<input type="checkbox"/> Certified List Requested		
<input type="checkbox"/> ESTAB Requested		
<input type="checkbox"/> MFTRAX Requested		
DATE	ADDITIONAL ACTIONS	FOLLOW UP
04/25/16	they have responded to multiple letters and are disputing some of the issues in the letters. Lien notice, CP22E, CP23's, letter 807, form 872, letter to IRS, dated 06/01/2015, LTR 88C, 2844C's attached.	
04/25/16	Beyond ACS Authority, taxpayer is disputing liability and requesting lien withdrawal. Sent 4473C letter to advise the transfer of their case to the Office of Appeals. Input TC520/76(B) dated 04/13/2016. FCC-compliance suite done. Balance due caused by math errors, additional assessments and unpaid taxes, penalties and interest. Total assessed balance due \$108,617.12	

Exhibit No. 7-R
Docket No. 1909-16C

29-23

Form 12153
(Rev. 12-2013)

Request for a Collection Due Process or Equivalent Hearing

Use this form to request a Collection Due Process (CDP) or equivalent hearing with the IRS Office of Appeals if you have been issued one of the following lien or levy notices:

- Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRO 6320,
- Notice of Intent to Levy and Notice of Your Right to a Hearing,
- Notice of Jeopardy Levy and Right of Appeal,
- Notice of Levy on Your State Tax Refund,
- Notice of Levy and Notice of Your Right to a Hearing,

Complete this form and send it to the address shown on your lien or levy notice. Include a copy of your lien or levy notice to ensure proper handling of your request.

Call the phone number on the notice or 1-800-829-1040 if you are not sure about the correct address or if you want to fax your request.

You can initiate a session on a planning, the deadline for requesting a Conference of a Promises
planning or its terms in the following:
Yearly, you must check the 7 C's
if you've missed a deadline to request a CDR
(Valid Learning) or request a revised planning.

1. Taxpayer Name: (Taxpayer 1) Jack S. Kannry

Taxpayer Identification Number

Jack S. Kannry

City New York State NY Zip Code 10075

2. Telephone Number and Best Time to Call During Normal Business Hours

Home (<u> </u>) <u> </u> <u> </u>	<input type="checkbox"/> am. <input type="checkbox"/> pm.
Work (<u>212</u>) <u>984</u> <u> </u> <u>7720</u>	<input type="checkbox"/> am. <input checked="" type="checkbox"/> pm.
Cell (<u>917</u>) <u>754</u> <u> </u> <u>6699</u>	<input type="checkbox"/> am. <input checked="" type="checkbox"/> pm.

3. Taxpayer Name: (Taxpayer 2) Joyce F. Kappny

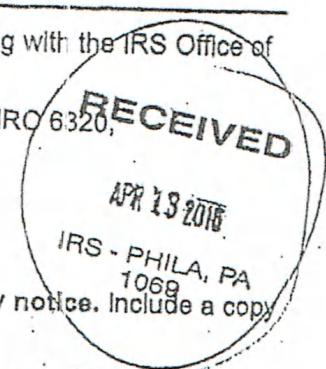
Taxpayer Identification Number _____

Current Address: _____

(If Different from Address Above) **City** _____ **State** _____ **Zip Code** _____

5. Tax Information as Shown on the Lien or Levy Notice (If possible, attach a copy of the notice.) _____ am. pm.

Type of Tax (Income, Employment, Excise, etc. or Civil Penalty)	Tax Form Number (1040, 941, 720, etc) Received	Tax Period or Periods
Income	1040 APR 14 2016	2011, 2012, 2013, 2014
	ACS Support Clerical Clerk # 10	Exhibit No. 2-R Docket No. 19091-16C



Form 12153
(Rev. 12-2013)

Request for a Collection Due Process or Equivalent Hearing

6. Basis for Hearing Request (Both boxes can be checked if you have received both a lien and levy notice)

Filed Notice of Federal Tax Lien

Proposed Levy or Actual Levy

7. Equivalent Hearing (See the Instructions for more information on Equivalent Hearings)

I would like an Equivalent Hearing - I would like a hearing equivalent to a CDP Hearing if my request for a CDP hearing does not meet the requirements for a timely CDP Hearing.

8. Check the most appropriate box for the reason you disagree with the filing of the lien or the levy. See page 4 of this form for examples. You can add more pages if you don't have enough space. If, during your CDP Hearing, you think you would like to discuss a Collection Alternative to the action proposed by the Collection function it is recommended you submit a completed Form 433A (Individual) and/or Form 433B (Business), as appropriate, with this form. See www.irs.gov for copies of the forms. Generally, the Office of Appeals will ask the Collection Function to review, verify and provide their opinion on any new information you submit. We will share their comments with you and give you the opportunity to respond.

Collection Alternative: Installment Agreement Offer in Compromise I Cannot Pay Balance

Lien Subordination Discharge Withdrawal

Please explain: NFTL should not have been filed, as being premature and not in accordance with statutory requirements.

My Spouse Is Responsible

Innocent Spouse Relief (Please attach Form 8857, Request for Innocent Spouse Relief, to your request.)

Other (For examples, see page 4)

Reason (You must provide a reason for the dispute or your request for a CDP hearing will not be honored. Use as much space as you need to explain the reason for your request. Attach extra pages if necessary):
Federal tax lien filing is a collection activity, not permitted under the Internal Revenue Code in the absence of a prior assessment, in the form of a statutory notice of deficiency, with stated 90 days period for taxpayer to dispute deficiency in U.S. Tax Court.
No such assessment occurred here. See attachment for details.

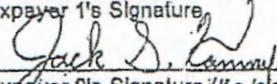
9. Signatures I understand the CDP hearing and any subsequent judicial review will suspend the statutory period of limitations for collection action. I also understand my representative or I must sign and date this request before the IRS Office of Appeals can accept it. If you are signing as an officer of a company add your title (president, secretary, etc.) behind your signature.

SIGN HERE

Taxpayer 1's Signature

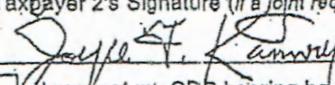
Date

Received

 Taxpayer 2's Signature (If a joint request, both must sign)

April 11, 2016

APR 14 2016

 Taxpayer 2's Signature (If a joint request, both must sign)

Date

April 11, 2016

ACS Support Clerical
Clerk # 10

I request my CDP hearing be held with my authorized representative (attach a copy of Form 2848)

Authorized Representative's Signature

Authorized Representative's Name

Telephone Number

IRS Employee Only

IRS Employee (Print)

Employee Telephone Number

IRS Received Date

**ATTACHMENT TO FORM 12153, REQUEST FOR CDP HEARING FOR
WITHDRAWAL OF FILED OF FEDERAL TAX LIEN AGAINST
JACK S. & JOYCE F. KANNRY**

Pursuant to Internal Revenue Code Sec. 6201 statutory assessment by IRS of claimed income taxes, penalties and interest owed, in the form of a notice of deficiency providing 90 days for Tax Court petition to dispute such claimed deficiency, is required prior to filing of Notice of Federal Tax Lien or any other collection activity. The IRS apparent contention (as set forth in the attached March 1, 2016 Form 668(Y), Notice of Federal Tax Lien, filed March 10, 2016 and subsequently mailed to us), in each of four indicated tax years (2011, 2012, 2013 and 2014), is that "assessment" occurred upon transmittal of Notice CP22E and CP23 forms, Change to Form 1040 and Amount Due, with stated right to disagree by phone or mail. Those notices are clearly not statutory notices of deficiency and, hence, there has been no proper assessment.

No statutory notice of deficiency has ever been received for any or all of the subject tax years, nor does the IRS suggest otherwise. Thus, there has been no assessment for any such years, such that the subject Notice of Federal Tax Lien, a collection activity, was filed prematurely and not in accordance with required IRS procedures. Accordingly, the requested prompt withdrawal of this lien is eminently appropriate, and is further supported by the included documentary evidence, predominantly comprising IRS notices and other writings, Exhibits A through J.

The attached IRS Notice of Federal Tax Lien shows the following "assessment" dates for the indicated 1040 taxes, but with the actual transmitted IRS notices on those dates, merely being "Change to Form 1040 and Amount Due", and NOT statutory notices of deficiency, which would otherwise create statutory assessments and permit commencement of collection activities after a 90 day period for a taxpayer challenge in the U.S. Tax Court:

2011 - 07/27/2015	Notice CP 22E (Exhibit A attached)
2012 - 12/09/2013	Notice CP 23 (Exhibit B)
2013 - 12/08/2014	Notice CP 23 (Exhibit C)
2014 - 12/07/2015	Notice CP 23 (Exhibit D)

We timely responded in writing to each of these notices, stating the bases for disagreement, as permitted, without any subsequent substantive IRS responses. Copies of those letters could be furnished, but are not at this time, since irrelevant to the documentation showing no statutory assessment for any of the indicated years.

* The IRS Notice of Federal Tax Lien also shows for 2011 a further "assessment" date of 12/17/2012 with a lien amount of \$9,01, but that notice was simply an earlier Notice CP23, in the same format as Exhibit A.

Specifically, as to tax year 2011, by letter dated May 28, 2015 (Exhibit E), the IRS Small Business/Self Employed Compliance Tax Compliance Officer advised that "[t]he limitation period allowed by law for assessing additional tax on your federal tax return will expire soon. Therefore, we request that you consent to extend the period for assessment." That letter enclosed Form 872, Consent to Extend the Time to Assess Tax (Exhibit F), from a stated expiration date of October 18, 2015 to December 31, 2017, and further noted that the taxpayer signing of such form "extends the statute of limitations period." Our June 1, 2015 response letter (Exhibit G), explained the reasons for our lack of willingness to sign Form 872, in the absence of clarification of a number of stated points. There was never any IRS substantive reply to that letter, nor subsequent transmittal of a statutory notice of deficiency for tax year 2011, but only its July 27, 2015 Notice CP22E (Exhibit A), which as noted above was not a statutory deficiency notice. A principal point to be gleaned here is the IRS proper written recognition as to a lack of any assessment, which by statutory definition precludes any premature collection activities.

As to tax years, 2012, 2013 and 2014, for which there likewise have been no statutory assessments, there remain open disputed issues, which the currently indicated assigned IRS offices (Holtsville, Kansas City, Memphis and Philadelphia) have indicated, as recently as the past month, will shortly be responded to, and which will hopefully expedite resolution of these issues. Thus, any subsequent statutory assessment as to any of these tax years would also be premature pending final disposition of open issues with the assigned IRS offices. Illustrative of such recent IRS correspondence are the following:

- 2012 February 23, 2016 IRS Holtsville office letter 86 C O (also references 2011, 2013 & 2014) (Exhibit H)
- 2013 March 10, 2016 IRS Memphis office letter 2644 C KO (Exhibit I)
- 2014 March 2, 2016 IRS Memphis office letter 2644 C KO (Exhibit J)

IRS historical practice has been to finalize any such open issues with a taxpayer prior to any assessment and subsequent collection activities, which would provide the taxpayer, if so advised, to first dispute any such deficiency notice in the U.S. Tax Court. None of that has occurred here for any of these years, underscoring the impropriety of the subject premature tax lien filing.

We urge that the seriousness of this matter warrants prompt attention. The public nature of this lien, which we consider totally improper, has subjected us to an onslaught of tax services mail from all over the country, boldly listing "Tax Lien" or worse on the envelopes, such that our talkative mailman is well aware of the lien. Additionally, at least one credit bureau has seen fit to lower our FICO score below its "Good" rating, because of such lien filing. Obviously, unless and until this unwarranted lien is withdrawn, further inappropriate detrimental activities affecting our personal and business credit can be expected.

Finally, while perhaps not directly germane, but certainly worth considering, we note that our tax obligations have always been met during the past 50+ years, notwithstanding any issues which were always resolved with the IRS. We expect to meet the same standard here, following withdrawal of the filed tax lien.

On the assumption of concurrence with our entitlement to prompt lien withdrawal, we request that the credit report agencies to be notified in writing by your office of the withdrawal notice are:

Experian National Consumer Assistance Center
P.O. Box 4500
Allen, TX 75013

Equifax Information Services, LLC
P.O. Box 740256
Atlanta, GA 30374

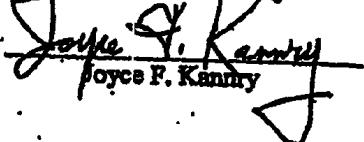
Trans Union LLC
Consumer Dispute Center
P.O. Box 2000
Chester, PA 19016

Your recognition of the urgency of this matter for early disposition is anticipated.

Very truly yours,



Jack S. Kenny



Joyce F. Kenny

Internal Revenue Service
Memphis Appeals Campus
PO Box 622
Stop 86
Memphis, TN 38101-0622.

Date: AUG 11 2016

JACK S KANNRY
515 E 79TH ST PH B
NEW YORK, NY 10075-0781

Department of the Treasury

Person to Contact:

J. Lee
Employee ID Number: 1000201739
Tel: 901-786-7457
Contact Hours: 8:00am CST-4:00pm
CST Monday thru Wednesday

Refer Reply to:

AP:CO:MEC:JLL

Taxpayer Identification Number:

[REDACTED]
Tax Type/Form Number:

Income/1040

In Re:

Collection Due Process Hearing
(Tax Court)

Tax Period(s) Ended:

12/2011 12/2012 12/2013 12/2014

CERTIFIED MAIL

7011 1150 0000 0679 3133

NOTICE OF DETERMINATION

CONCERNING COLLECTION ACTION(S) UNDER SECTION 6320 and/or 6330

Dear Mr. Kannry:

We have reviewed the collection actions that were taken or proposed for the period(s) shown above. This letter is your Notice of Determination, as required by law. A summary of our determination is stated below. The attached statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions about them.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court within 30 days from the date of this letter.

To obtain a petition form and the rules for filing a petition, write to: Clerk, United States Tax Court, 400 Second Street, NW, Washington, D.C. 20217, or access the Tax Court website at www.ustaxcourt.gov.

In addition to the regular United States Tax Court procedures, the United States Tax Court also has a simplified procedure for an appeal under section 6330(d)(1)(A) of a determination in which the unpaid tax does not exceed \$50,000. You may also obtain information about this simplified procedure by writing to the United States Tax Court or accessing the United States Tax Court website at www.ustaxcourt.gov.

The time limit (30 days from the date of this letter) for filing your petition is fixed by law. The courts cannot consider your case if you file late. If an appeal is filed in the incorrect court (e.g., United States District Court), you will not be able to refile in the United States Tax Court if the time period for filing a Tax Court petition has expired.

If you do not petition the court within the time frame provided by law, your case will be

Exhibit No. 13-A

Docket No. 19071-16L

returned to the originating IRS office for action consistent with the determination summarized below and described on the attached page(s). If you have any questions, please contact the person whose name and telephone number are shown above.

Summary of Determination

Our determination is not to grant you relief under Internal Revenue Code (IRC) section 6320 from the filing of the Notice of Federal Tax Lien (NFTL) covering your 2011, 2012, 2013, and 2014 liabilities. Appeals believe that the Notice of Federal Tax Lien was appropriate and that it should be released once the requirements for issuance of a release have been met.

Therefore, the filing of the NFTL is sustained. The Notice of Federal Tax Lien was appropriately filed; however, you did not agree on a collection alternative. Your case will be returned to the Compliance Office for appropriate collection actions. A further explanation is contained in the attachment to this letter.

Lisa Kelly
Sincerely
Lisa Kelly
Appeals Team Manager

Enclosure(s): Attachment

Attachment - Letter 3193, Notice of Determination**Liabilities Considered - LIEN (IRC §6320)**

Type of Tax	Tax Period	Date of CDP Notice	Date CDP Request Received; If after 30 days, date CDP Mailed
1040	201112	03/10/2016	04/13/2016
1040	201212	03/10/2016	04/13/2016
1040	201312	03/10/2016	04/13/2016
1040	201412	03/10/2016	04/13/2016

SUMMARY AND DETERMINATION

You requested a Collection Due Process (CDP) Hearing under Internal Revenue Code (IRC) Section (§) 6320 in reference to a Notice of Federal Tax Lien Filing (NFTL).

Your request for a CDP Hearing was timely since it was received within the 30-day time period as set in the statute.

Appeals determination is that relief is not granted from the NFTL. You did not qualify for withdrawal of the notice as allowed for in IRC 6323(j). Therefore, the filing of the NFTL is sustained.

BRIEF BACKGROUND

A "Notice of Federal Tax Lien Filing and Your Right to a Hearing" for the tax periods listed above were sent to you on 03/10/2016. The CDP request was received 04/13/2016. There was no Power of Attorney on file. The tax liability is the results of insufficient withholdings and not estimated tax payments for tax years 2011, 2013, and 2014 and insufficient withholdings and not enough estimated tax payments for tax year 2012. The statutory periods for collection were suspended.

The Appeals employee who was assigned to your case has had no prior involvement, either in a previous Appeals hearing or in Compliance activities, with you concerning the applicable tax periods before this CDP case. This is a valid assessment; however, there was a balance due when the Collection Due Process lien notice was filed. Assessment was made on the applicable CDP notice periods based on the return you filed, per IRC § 6201, and the notice and demand for payment letter was mailed to your last known address, within 60 days of the assessment, as required by IRC § 6303. The Settlement Officer verified this information from the transcripts.

DISCUSSION AND ANALYSIS

IRC § 6320 require the Service to:

- a) Verify at the Hearing that the requirements of legal and administrative procedures have been met;
- b) Adequately review specific issues raised by a taxpayer at a Hearing, and;
- c) Balance the needs of the Service to efficiently collect the tax with the taxpayer's expectation that the proposed actions be no more intrusive than necessary.

Verification of legal and administrative procedural requirements:

I, June L Lee, verified the requirements of any applicable law or administrative procedure were met. IRS records confirmed the proper issuance of the notice and demand, Notice of Intent to Levy and/or Notice of Federal Tax Lien (NFTL) filing, and notice of a right to a Collection Due Process (CDP) hearing.

An assessment was properly made for each tax and period listed on the CDP notice.

Notice and demand for payment was mailed to your last known address.

There was a balance due when the Notice of Intent to Levy was issued or when the NFTL filing was requested.

I had no prior involvement with respect to the specific tax periods either in Appeals or Compliance.

I reviewed the Collection file, IRS records and information you provided. My review confirmed that the IRS followed all legal and procedural requirements, and the actions taken or proposed were appropriate under the circumstances.

Issues raised by the taxpayer:

Issue: You requested for the lien to be withdrawn. You stated that you did not receive the Statutory Notice of Deficiency. You did not propose a collection alternative.

Response: You did not propose a collection alternative. You did not respond to submit signed Form 433A as requested by 06/28/2016 or prior to the conference. You stated that you did not receive the Statutory Notice of Deficiency. Your returns for tax years 2011 thru 2014 were self-assessed returns which you filed. Therefore, there is no Statutory Notice of Deficiency. A phone conference was held with you on 07/26/2013. You stated that you did not want to discuss collection alternatives. You requested for the lien to be withdrawn. You stated that the lien would damage your credit ratings. The Settlement Officer explained to you that the lien was filed in order to protect the government's interest when the assessed taxes are \$10,000.00 or more. The lien will be released once the total tax liability is paid in full or the collection statute expires, whichever comes first. Your total liability is over the streamline criteria of \$50,000.00. The Settlement Officer also explained to you that if you set up a Direct Debit Installment Agreement and get your

balance under \$25,000.00 and have at least three consecutive payments drafted out of your bank account; then, you can contact the Internal Revenue Service to request that the lien be withdrawn at that time. However, you did not provide any information to meet the conditions to release or withdraw the lien. Since you did not agree on a collection alternative, the filing of the NFTL is sustained. The lien will not be released until the agreement has been satisfied and the liability is paid in full or the collection statute expires. Please be advised that the penalty and interest will continue to accrue and any refunds will be offset against your tax liability until the balance is paid in full. There were no other issues raised.

IRC section 6323(j) allows the withdrawal of a filed notice of lien without full payment and without prejudice under the following conditions:

- a. the filing of the notice was premature or otherwise not in accordance with the Service's administrative procedures;
- b. the taxpayer entered into an agreement under Section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise;
- c. withdrawal of such notice will facilitate the collection of the tax liability, or
- d. with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interest of the taxpayer (as determined by the Taxpayer Advocate) and the United States,

You have not provided any specific information or documents which would indicate that withdrawal of the NFTL's would facilitate the collection of the tax liability and there is no indication that withdrawal of the liens would be in the government's best interest. You raised no other issues relating to the unpaid taxes and made no other proposals regarding collection alternatives. You did not raise a challenge to the existence or amount of the underlying liability.

**Balancing the need for efficient collection with taxpayer concerns
that the collection action be no more intrusive than necessary:**

Generally, the Internal Revenue Manual provisions require Service personnel to file a Notice of Federal Tax Lien when the total liabilities pass a certain threshold, which yours did. The decision to file a Notice of Federal Tax Lien is generally the least intrusive method of protecting the government's interest, since it does not involve the actual taking of property through levy or seizure. The filing of the NFTL has been determined to be appropriate, given the facts and circumstances of this particular case. We believe the filing of the NFTL balances the need for the efficient collection of taxes with your legitimate concern that any collection action be no more intrusive than necessary. You presented no additional information to allow consideration of lien withdrawal. Therefore, the filing of the NFTL is sustained.

Internal Revenue Service
Memphis Appeals Campus
PO Box 622
Stop 86
Memphis, TN 38101-0622

Date: AUG 11 2016

JOYCE F KANNRY
515 E 79TH ST PH B
NEW YORK, NY 10075-0781

Department of the Treasury

Person to Contact:

J. Lee
Employee ID Number: 1000201739
Tel: 901-786-7457
Contact Hours: 8:00am CST-4:00pm
CST Monday thru Wednesday

Refer Reply to:

AP:CO:MEC:JLL

Taxpayer Identification Number:
[REDACTED]

Tax Type/Form Number:
Income/1040

In Re:

Collection Due Process Hearing
(Tax Court)

Tax Period(s) Ended:

12/2011 12/2012 12/2013 12/2014

CERTIFIED MAIL 7013 1150 0000 0679 3124

NOTICE OF DETERMINATION
CONCERNING COLLECTION ACTION(S) UNDER SECTION 6320 and/or 6330

Dear Mrs. Kannry:

We have reviewed the collection actions that were taken or proposed for the period(s) shown above. This letter is your Notice of Determination, as required by law. A summary of our determination is stated below. The attached statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions about them.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court within 30 days from the date of this letter.

To obtain a petition form and the rules for filing a petition, write to: Clerk, United States Tax Court, 400 Second Street, NW, Washington, D.C. 20217, or access the Tax Court website at www.ustaxcourt.gov.

In addition to the regular United States Tax Court procedures, the United States Tax Court also has a simplified procedure for an appeal under section 6330(d)(1)(A) of a determination in which the unpaid tax does not exceed \$50,000. You may also obtain information about this simplified procedure by writing to the United States Tax Court or accessing the United States Tax Court website at www.ustaxcourt.gov.

The time limit (30 days from the date of this letter) for filing your petition is fixed by law. The courts cannot consider your case if you file late. If an appeal is filed in the incorrect court (e.g., United States District Court), you will not be able to refile in the United States Tax Court if the time period for filing a Tax Court petition has expired.

If you do not petition the court within the time frame provided by law, your case will be

returned to the originating IRS office for action consistent with the determination summarized below and described on the attached page(s). If you have any questions, please contact the person whose name and telephone number are shown above.

Summary of Determination

Our determination is not to grant you relief under Internal Revenue Code (IRC) section 6320 from the filing of the Notice of Federal Tax Lien (NFTL) covering your 2011, 2012, 2013, and 2014 liabilities. Appeals believe that the Notice of Federal Tax Lien was appropriate and that it should be released once the requirements for issuance of a release have been met.

Therefore, the filing of the NFTL is sustained. The Notice of Federal Tax Lien was appropriately filed; however, you did not agree on a collection alternative. Your case will be returned to the Compliance Office for appropriate collection actions. A further explanation is contained in the attachment to this letter.

Sincerely,
Lisa Kelly

Lisa Kelly
Appeals Team Manager

Enclosure(s): Attachment

Attachment - Letter 3193, Notice of Determination**Liabilities Considered - LIEN (IRC §6320)**

Type of Tax	Tax Period	Date of CDP Notice	Date CDP Request Received; If after 30 days, date CDP Mailed.
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1040	201212	03/10/2016	04/13/2016
1040	201312	03/10/2016	04/13/2016
1040	201412	03/10/2016	04/13/2016

SUMMARY AND DETERMINATION

You requested a Collection Due Process (CDP) Hearing under Internal Revenue Code (IRC) Section (§) 6320 in reference to a Notice of Federal Tax Lien Filing (NFTL).

Your request for a CDP Hearing was timely since it was received within the 30-day time period as set in the statute.

Appeals determination is that relief is not granted from the NFTL. You did not qualify for withdrawal of the notice as allowed for in IRC 6323(j). Therefore, the filing of the NFTL is sustained.

BRIEF BACKGROUND

A "Notice of Federal Tax Lien Filing and Your Right to a Hearing" for the tax periods listed above were sent to you on 03/10/2016. The CDP request was received 04/13/2016. There was no Power of Attorney on file. The tax liability is the results of insufficient withholdings and not estimated tax payments for tax years 2011, 2013, and 2014 and insufficient withholdings and not enough estimated tax payments for tax year 2012. The statutory periods for collection were suspended.

The Appeals employee who was assigned to your case has had no prior involvement, either in a previous Appeals hearing or in Compliance activities, with you concerning the applicable tax periods before this CDP case. This is a valid assessment; however, there was a balance due when the Collection Due Process lien notice was filed. Assessment was made on the applicable CDP notice periods based on the return you filed, per IRC § 6201, and the notice and demand for payment letter was mailed to your last known address, within 60 days of the assessment, as required by IRC § 6303. The Settlement Officer verified this information from the transcripts.

DISCUSSION AND ANALYSIS

IRC § 6320 require the Service to:

- a) Verify at the Hearing that the requirements of legal and administrative procedures have been met;
- b) Adequately review specific issues raised by a taxpayer at a Hearing, and;
- c) Balance the needs of the Service to efficiently collect the tax with the taxpayer's expectation that the proposed actions be no more intrusive than necessary.

Verification of legal and administrative procedural requirements:

I, June L Lee, verified the requirements of any applicable law or administrative procedure were met. IRS records confirmed the proper issuance of the notice and demand, Notice of Intent to Levy and/or Notice of Federal Tax Lien (NFTL) filing, and notice of a right to a Collection Due Process (CDP) hearing.

An assessment was properly made for each tax and period listed on the CDP notice.

Notice and demand for payment was mailed to your last known address.

There was a balance due when the Notice of Intent to Levy was issued or when the NFTL filing was requested.

I had no prior involvement with respect to the specific tax periods either in Appeals or Compliance.

I reviewed the Collection file, IRS records and information you provided. My review confirmed that the IRS followed all legal and procedural requirements, and the actions taken or proposed were appropriate under the circumstances.

Issues raised by the taxpayer:

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Response: You did not propose a collection alternative. You did not respond to submit signed Form 433A as requested by 06/28/2016 or prior to the conference. You stated that you did not receive the Statutory Notice of Deficiency. Your returns for tax years 2011 thru 2014 were self-assessed returns which you filed. Therefore, there is no Statutory Notice of Deficiency. A phone conference was held with you on 07/26/2016. You stated that you did not want to discuss collection alternatives. You requested for the lien to be withdrawn. You stated that the lien would damage your credit ratings. The Settlement Officer explained to you that the lien was filed in order to protect the government's interest when the assessed taxes are \$10,000.00 or more. The lien will be released once the total tax liability is paid in full or the collection statute expires, whichever comes first. Your total liability is over the streamline criteria of \$50,000.00. The Settlement Officer also explained to you that if you set up a Direct Debit Installment Agreement and get your

balance under \$25,000.00 and have at least three consecutive payments drafted out of your bank account; then, you can contact the Internal Revenue Service to request that the lien be withdrawn at that time. However, you did not provide any information to meet the conditions to release or withdraw the lien. Since you did not agree on a collection alternative, the filing of the NFTL is sustained. The lien will not be released until the agreement has been satisfied and the liability is paid in full or the collection statute expires. Please be advised that the penalty and interest will continue to accrue and any refunds will be offset against your tax liability until the balance is paid in full. There were no other issues raised.

IRC section 6323(j) allows the withdrawal of a filed notice of lien without full payment and without prejudice under the following conditions:

- a. the filing of the notice was premature or otherwise not in accordance with the Service's administrative procedures;
- b. the taxpayer entered into an agreement under Section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise;
- c. withdrawal of such notice will facilitate the collection of the tax liability, or
- d. with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interest of the taxpayer (as determined by the Taxpayer Advocate) and the United States.

You have not provided any specific information or documents which would indicate that withdrawal of the NFTL's would facilitate the collection of the tax liability and there is no indication that withdrawal of the liens would be in the government's best interest. You raised no other issues relating to the unpaid taxes and made no other proposals regarding collection alternatives. You did not raise a challenge to the existence or amount of the underlying liability.

**Balancing the need for efficient collection with taxpayer concerns
that the collection action be no more intrusive than necessary:**

Generally, the Internal Revenue Manual provisions require Service personnel to file a Notice of Federal Tax Lien when the total liabilities pass a certain threshold, which yours did. The decision to file a Notice of Federal Tax Lien is generally the least intrusive method of protecting the government's interest, since it does not involve the actual taking of property through levy or seizure. The filing of the NFTL has been determined to be appropriate, given the facts and circumstances of this particular case. We believe the filing of the NFTL balances the need for the efficient collection of taxes with your legitimate concern that any collection action be no more intrusive than necessary. You presented no additional information to allow consideration of lien withdrawal. Therefore, the filing of the NFTL is sustained.

Appeals Transmittal and Case Memo - CDP		Date:
Route Case To: ACS ACS/CDP - M/S 4-Q26.133, 2970 Market Street, Philadelphia, PA 19104		From: Appeals Code: 197 APCO-MBC:LL PO Box 622 Stop 86 Memphis TN 38101-0622 01-786-7457 Ext.
Feature Codes: Collection Due Process - Lien PRIBUSCD: 299		
Taxpayer(s) KANNRY, JACK S & JOYCE F 515 E 79TH ST PH B NEW YORK NY 10075-0781		WUNO-related MFT/PDS: MFT: Tx Pd(s):
SSN/IN		Workunit No.: 9716132032
Type of Case: DPLN	Category Code: CDP	
MFT/Tax Period(s) 201112/30 201212/31 201312/30 201412/30		

Disposal Information: ARDI Code: 7
 Closing Code: Determination Letter issued (APS will assign closing code after suspense period)
 Reason Code: CS - Collection Sustained
 Resolution Reason: O1 - Other
 Closing Information for: Filing of Notice of Lien, Sustained

Special Features, Remarks, and/or Appeals Case Memorandum:

Taxpayers did not want to discuss collection alternatives. They requested the lien to be withdrawn. They did not provide any information to meet the conditions to release or withdraw the NFTL. The Settlement Officer informed them in the conference held on 07/26/2016 that the lien is sustained. The request to release or withdraw the NFTL is denied.

For APS use:
 TC 520 reversal information: (Need TC550 if "P" or "S" on joint account) (TCS2x/Date):
 Use TC 521:
 Determination Letter, TC 521=Date determination becomes final _____
 Form 12257 (cc04), TC 521=Date waiver signed _____
 Form 12256 (cc16), TC 521=Date Appeals received with withdrawal _____
 Use TC 522 for Resolution or Premature Referral, cc20 (TC 522 date will be the same date as the TC 520):

Taxpayer's Representative	Representative's Telephone No.	Docket No.
AO/SO Signature	Date	Earliest Statute Date
June L Lee	7/26/16	SUSP
Approved by  June L Lee, Appeals Team Manager	Date: 8/31/14	Area Counsel
Department of the Treasury - Internal Revenue Service		

Form 5402-a (Rev. 07/2006)

Exhibit No. 12-R
 Docket No. 19071-16C

U.S. TAX COURT
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U.S. TAX COURT
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JACK S. KANNRY & JOYCE F. KANNRY,
Petitioners,

PAPER FILED

v.

Docket No. 19091-16 L

COMMISSIONER OF INTERNAL REVENUE,
Respondent

**PETITIONER JACK S. KANNRY'S DECLARATION OF PETITIONER
JACK S. KANNRY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

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JACK S. KANNRY and JOYCE F. KANNRY BY: *✓* DEPUTY ATTORNEY NO. 19091-16L
Petitioners,)
)
-against-)
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)
----- X

**SUPPORTING AFFIDAVIT AND ANNEXED EXHIBITS ON
PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT AND IN SUPPORT OF CROSS-MOTION FOR
SUMMARY JUDGMENT AGAINST RESPONDENT**

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JACK S. KANNRY, being duly sworn, deposes and says:

1. I am a petitioner pro se in this proceeding, together with my wife, Joyce F. Kannry, and am familiar with the facts and circumstances in the subject motion and cross-motion, including the contents of the documents annexed hereto as exhibits.

2. This affidavit is submitted in support of petitioner's opposition to respondent's motion for summary judgment under Tax Court Rule 121 on the grounds that there exist genuine issues of material disputed facts as asserted by respondent, precluding summary disposition for respondent and that the existence of material facts, either omitted from or misconstrued in respondent's motion papers, and well documented in the annexed exhibits, warrants summary judgment in favor of petitioners.

3. This proceeding was timely commenced in this Court by petition dated August 26, 2016 and attached documents, seeking redetermination of a Notice of Determination Concerning Collection Action, an August 11, 2016 determination by the IRS Appeals Office (Exhibit 1-P) that a March 10, 2016 Notice of Federal Tax Lien ("NFTL") filing for the tax years at issue (2011, 2012, 2013 and 2014) (Exhibit 2-P) was sustained as appropriate, since the holding of that office was that tax returns for those years were all self-assessed, requiring no Notice of Deficiency.

4. Petitioners have asserted throughout this proceeding that the NFTL was an IRS collection activity, only permissible if a prior proper assessment existed, and that the filing of such NFTL "was premature and not in accordance with administrative procedures," which are specified statutory standards mandating withdrawal of a filed NFTL [IRC Sec. 6323(j)(1)(A)].

5. The NFTL (Exhibit 2-P) shows the "dates of assessment" to be July 27, 2015 for tax year 2011; December 9, 2013 for 2012; December 8, 2014 for 2013; and December 7, 2015 for 2014. The actual self-assessment dates of return filings were October 15, 2012, October 15, 2013, October 15, 2014 and October 15, 2015, respectively. In each such instance, the only IRS writings transmitted to petitioners bearing the NFTL "assessment" dates were CP22E and CP23 notices (Exhibits 3-P, 4-P, 5-P and 6-P), entitled "Changes to Form 1040 Amount Due", and inviting petitioners, if in disagreement with such proposed changes, to contact the IRS by phone or mail as to such disagreement. Additionally, each such notice included the statement: "If we don't hear from you, we'll assume you agree with the information in the notices", further underscoring the non-final assessment nature of such notices, if there was disagreement.

6. Petitioners disagreed with such changes by letters to the IRS local transmitting offices (Holtsville, NY and Kansas City, MO), but significantly received no IRS substantive responses to the issues raised, as specifically discussed below respecting each of the tax years at issue. Moreover, at a February 16, 2017 meeting at the IRS office between the undersigned petitioner and IRS counsel Frederick C. Mutter, Esq., such respondent's counsel confirmed petitioners' expressed view that such CP22E and CP23 notices did not constitute assessment notices, which would otherwise reflect IRS final tax determinations as a prelude to collection activities, as distinct from initially proposed changes with which the taxpayer had the right to disagree.

7. Additionally relevant to the specific events herein are the enunciated principles in IRS Publication 1, "Your Rights as a Taxpayer, The Taxpayer Bill of Rights" (Exhibit 7-P). Specifically, among those "Taxpayer Bill of Rights" are "1. The Right to be Informed"; which is to include "clear explanation of the outcomes" of IRS decisions; "2. The Right to Quality Service", including the right "to receive clear and easily understandable communications from the IRS"; "4. The Right to Challenge the IRS's Position and be Heard", including the right "to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position"; "5. The Right to Appeal an IRS Decision in an Independent Forum", including entitlement "to a fair and impartial administrative appeal of most IRS decisions,"; and "6. The Right to Finality," including "the right to know when the IRS has finished an audit." These important taxpayer rights have largely been honored in the breach by the IRS, in its numerous nonresponsive and unclear letters to petitioners, generally seeking more time to respond, followed by extended silence.

8. A number of the facts hereinafter set forth derive from respondent's answer to the petition, dated October 17, 2016; respondent's response to petitioners' amended and supplemental request for production of documents, dated November 21, 2017; and from respondent's motion papers herein. As provided for in Tax Court Rule 33(b), the signature of counsel on pleadings "constitutes a certificate by the signer that the signer has read the pleading; that, to the best of the signer's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law . . ." Tax Court Rule 70(f)(1) provides a similar standard for counsel signature on responses to discovery requests, and on the motion papers as well, pursuant to Rule 50(a) and related referenced Rules.

As to Tax Year 2011 Issues

9. Petitioners timely filed their 2011 Form 1040 tax return and requisite schedules on the extended due date of October 15, 2012, as to which there is no issue on this motion.

10. On October 29, 2012, Hurricane/Super Storm Sandy struck the northeastern United States, including the metropolitan New York area, and more specifically petitioners' residence* in Long Beach, New York. That home, which was located in one of the areas most devastated by Sandy, was subjected to a 3 ½ foot ocean surge, mixed with sewage backup, in a finished basement, which contaminated all the contents therein (furniture, pool table, television, carpeting, boiler, central A/C equipment, hot water heater, washer/dryer, etc.), as well as building components (buckled garage door, many blown off roof slates, saturated and

* Respondent's counsel has characterized such residence as petitioners' "vacation home" (Motion, p. 3, para. 9), without any factual basis, whereas petitioners correctly listed it in their filed 1040X-Amended return for 2011 as their main home prior to and as of the Hurricane Super Storm Sandy event.

contaminated walls, etc.), with resultant damages well into six figures, only a small portion of which was reimbursed by applicable flood and homeowner insurance.

11. In a January 17, 2013 IRS letter to petitioners (Exhibit 8-P), responding to a December 26, 2012 petitioners' letter expressing disagreement with a December 17, 2012 IRS Notice CP23 concerning proposed changes to the amount due on the 2011 Form 1040 income tax, it was stated by the IRS that "[y]our account has been coded as being a victim of hurricane Sandy." (7th unnumbered para.)

12. Inasmuch as the casualty loss sustained by petitioners occurred in a disaster area attributable to a federally declared disaster, as stated in IRS Publication 2194, Disaster Resource Guide for Individuals and Businesses (Exhibit 9-P):

[Y]ou can choose to deduct that loss on your return for the tax year immediately preceding the year in which the disaster happened. . . . If you have already filed your return for the preceding year, you may claim the loss by filing an amended return, Form 1040X (p. 9, 2nd unnumbered para.)

13. As stated in the IRS Instructions applicable to a 2011 Form 1040X (Exhibit 10-P):
Form 1040X will be your new tax return, changing your original return to include new information. The entries you make on Form 1040X under the columns headed Correct Amount and Correct number or amount are the entries you would have made on your original return had it been done correctly. . . . It is as if you were using the new information to complete your original return. ("What's New" headnote, 2nd unnumbered para.)

14. In this situation, the new information on Form 1040X could not have been included in the original Form 1040, because it was based upon a subsequent federally declared disaster, with the casualty loss arising therefrom permitted to be incorporated into the prior year's tax return, i.e., for tax year 2011.

15. Pursuant to the above noted IRS instructions, the requisite Form 1040X and attached schedules for tax year 2011 were filed by petitioners on April 21, 2013, which filing incorporated and subsumed all items of income, deductions, tax liability and payments from the originally filed Form 1040, and such Form 1040X was accepted and filed by the IRS (Exhibit 11-P), without any further notice or other correspondence for the next several months.

16. The balance shown to be owed on the 1040X amended return for 2011 was \$21,214.00, paid concurrently with the filing of such return by petitioners' personal check (Exhibit 12-P). At that point, then, pursuant to the above noted applicable IRS 1040X instructions, all income taxes for 2011 had been fully paid.

17. By letter dated November 14, 2013, IRS Tax Compliance Officer ("TCO") Judy Washington with the Small Business and Self-Employed Office, advised petitioners that "[y]our federal income tax return for the year shown above [2011] has been selected for examination." and that "the examination will primarily be focused on . . . Casualty and Theft loss (per 1040X)." (Exhibit 13-P).

18. During the ensuing period of more than 1 ½ years, and into May 2015, petitioners provided the IRS with all requested documents and information to complete its examination.

19. Unbeknownst to petitioners in that period, but provided in discovery, are a series of handwritten notes by the IRS TCO on "Contacts and Activities" Form 9984-D, setting forth her time and activities on such examination from 11/14/2013 to 6/22/2015, and subsequently countersigned by her Group Manager with the stamped notation, "Penalties discussed and not asserted" (Exhibit 14-P). Such notes state in relevant part:

a. 5/13/2015 TCO entry: "TCO received findings from Evaluation Department. . . . Case was discussed with Group Manager. Memo by appraiser is not to be sent to tp [taxpayer] and spouse."

(1) On that same date, May 13, 2015, the IRS TCO wrote to petitioners, stating in part that petitioners claim had been examined and that office proposed "[f]ull disallowance, as shown on the enclosed examination report," and that the reason for disallowance was that "[a]ppraisal department made determination. Based on their findings, your claim has been denied/disallowed." (Exhibit 15-P). Included with that document were a number of forms, stating a claim disallowance of \$21,214, but no "enclosed examination report" in explanation.

(2) May 20, 2015 petitioners' letter to IRS TCO advised that petitioners "did not understand any of the reasons for "full disallowance", since no examination report was provided with prior TCO letter, but nevertheless petitioners requested Appeals consideration. (Exhibit 16-P).

b. 5/28/2015 TCO entry: "Form 872 [Consent & Extend the Time to Assess Tax] is being sent to extend the statute in order for tp and spouse to have case transferred to Appeals. TCO explained to tp, if documents are not signed and returned, case will be closed and tp and spouse will lose [sic] their appeal rights. TCO stated appraiser denied claim. *Claim shows tp was trying to reduce from previous balance owed when filing original return.*" (emphasis supplied) (Exhibit 14-P).

(1) Italicized TCO comment suggests an impropriety by petitioners in claiming a tax deduction for casualty losses due to a federally declared disaster, that occurred subsequent to the original return filing date, which procedure was proper in accordance with applicable IRS statutes and guidelines.

(2) The IRS Form 872 sought petitioners' consent to an extension for tax assessment to a date beyond three years from the original 2011 Form 1040 filing, i.e., for a contemplated prospective deficiency assessment not already in existence. (Exhibit/Tab F to Exhibit 24-P).

(3) By letter dated May 28, 2015 the IRS TCO requested petitioners' consent to extend the period for assessment because "[t]he limitation period allowed by law for assessing additional tax on your federal tax return will expire soon." (Exhibit 17-P).

(4) June 1, 2015 petitioners' letter to TCO concerning issues that needed to be addressed by IRS prior to any extension for assessment, as to which there was no response. (Exhibit 18-P).

c. 6/8/2015 TCO entry: "Can tp receive copy of IRS appraiser's findings? Group mgr stated tp can receive memo [reversing position per 5/13/2015 TCO

entry]. . . . TCO stated [to tp] if Form 872 is not signed and returned [within 10 days], case will be closed. (Exhibit 14-P).

20. July 27, 2015 IRS Notice CP 22E for tax year 2011, including increase in tax of \$4,873.10 and increase in failure-to-pay penalty of \$8,064.34, for a total additional proposed tax of \$12,937.44, it having been recognized by this Court that a taxpayer's underlying tax liability includes penalties and additions to tax that are part of the unpaid tax that the Commissioner seeks to collect. In this instance, such amounts would constitute a proposed deficiency, which would be that amount by which the IRS contends that the tax imposed exceeds the amount shown as the tax by the taxpayer upon his return. (Exhibit 3-P).

21. In IRS Publication 1035, Extending the Tax Assessment Period (Exhibit 19-P), it is stated in pertinent part, under the heading of "Your Available Options" and sub-heading "Refusal to sign the consent" (at top of third page), the steps which the IRS then takes:

... that may ultimately allow us to assess any tax we determine to be due. These steps begin with the issuance of a notice of deficiency The notice give you 90 days . . . to either agree to the deficiency or file a petition with the United States Tax Court for a redetermination of the proposed deficiency.

22. Rather than the then required statutory notice of deficiency (which Publication 1035 points out "... is not an assessment of tax. It is a proposed deficiency."), the IRS chose to transmit to petitioners the aforementioned July 27, 2015 Form CP 22E Changes to your 2011 Income Tax, and at no time thereafter any notice of deficiency.

23. In the absence of an executed Form 872, Consent to Extend the Time to Assess Tax (Exhibit/Tab F to Exhibit 24-P) beyond October 18, 2015, three years from the IRS receipt

of the original 2011 Form 1040, which was filed on October 15, 2012, and the lack of any timely notice of deficiency, the IRS is barred from subsequently assessing any such additional tax for 2011.*

24. The IRS NFTL dated March 10, 2016 (Exhibit 2-P), states an unpaid balance of assessment of \$59,075 (all dollars rounded here), with an assessment date of 07/27/2015. The only IRS document bearing that date, mailed to petitioners, was a Notice CP 22E, Change to your 2011 Form 1040 (Exhibit 3-P), which states in a "Billing Summary," without explanation, the components of that total as follows:

Account balance before this change	\$42,019
Increase in tax	4,873
Increase in failure-to-pay penalty	8,064
Increase in interest	<u>4,118</u>
Amount due:	\$59,075

25. The NFTL which was filed more than seven months following the July 27, 2015 notice of a supposed assessed deficiency for 2011 was flawed as to 2011, since there existed no such assessed deficiency in that period, albeit included in the NFTL.

26. Following petitioners' receipt of that Notice CP22E, they thereupon availed themselves of the Notice CP22E option "[i]f you don't agree with the changes", by contacting the issuing IRS office (Holtsville, NY) by mail, in a detailed letter dated August 10, 2015, the

* Respondent's motion (p. 3, para. 9) mischaracterized the July 27, 2015 notice (Exhibit 3-P) as an event whereby, "after an examination of the Form 1040X, Respondent assessed a tax deficiency, a failure to pay addition to tax and accrued interest," (emphasis provided). However, it is beyond dispute that a deficiency can only be assessed by a formal notice of deficiency, unless challenged by the taxpayer in Tax Court, in which event there is no such assessment until judicial disposition.

first of several futile written efforts to learn the basis for these "Changes" to the 2011 income tax penalties and interest amounts. (Exhibit 20-P).

27. Those serious inquiries have never been addressed by the IRS prior to this proceeding, with its last letter dated February 23, 2016 (Exhibit 21-P), advising that the Philadelphia office "will contact you regarding your inquiry" within 60 days, but no such response on these issues was forthcoming from the IRS.

28. The August 11, 2016 IRS Appeals Office Notice of Determination Concerning Collection Action (Exhibit 1-P), which sustained the filing of the March 10, 2016 NFTL (Exhibit 2-P) based on a phone hearing conducted on July 26, 2016 by Settlement Officer ("SO") June L. Lee, was flawed in a number of respects, creating the antithesis of the requisite due process.

29. A statutory notice of deficiency ("SNOD") was absolutely required for tax year 2011, since there had been a deficiency asserted following an audit, such that the June 9, 2016 conclusion by SO Lee in the Case Activity Record Print that "[t]heir returns were self-assessed returns and SNOD was not needed/mailed" was erroneous as to tax year 2011 (Exhibit 22-P).

30. Further to the above issues, SO Lee states in a June 28, 2016 entry in the Case Activity Record Print that:

Their returns were self-assessed returns. There was an exam assessment on tax year 2011 with code 3 as agreed. The taxpayer would not get a SNOD when they agreed to the assessment" (Exhibit 22-P)

31. Since there had been no such assessment agreement by petitioners, the SNOD had been required for such claimed deficiency prior to the filing of the NFTL, thereby invalidating

such filing. Significantly, at the July 26, 2016 CDB hearing, the SO did not mention any supposed taxpayer agreement to the 2011 proposed deficiency, which would have immediately been challenged. Notwithstanding the above SO quote in her Case Activity Record Print, written prior to the CDP hearing, the SO merely advised the undersigned petitioner that the tax for 2011 was self-assessed.

32. In an April 13, 2016 CDP History Sheet, the IRS states that taxpayer explanation, in filing for a CDP Hearing, was that "NFTL should not have been filed, as being premature and not in accordance with statutory requirements. Other reasons attached in page 3 explanation why Lien should not have been issued and that they have responded to multiple letters and are disputing some of the issues in the letters, Lien notice, CP22E, CP23's, letter 907, form 872, letter to IRS dated 06/01/2015, LTR 86C, 2644C's attached." (Exhibit 23-P).

33. Such "other reasons" included issues as to tax amount liability, penalty abatements due to economic hardship and need for interest recalculations, none of which were addressed by the SO at the CDP hearing, although the SO obviously was aware of those earlier stated other reasons as stated in that CDP History Sheet and in petitioners' April 11, 2016 Form 12153, Request for CDP Hearing. (Exhibit 24-P).

34. That July 26, 2016 hearing between SO Lee and the undersigned petitioner was of short duration, or about 0.50 hours according to the SO Lee¹, and was more of a lecture by the SO than the expected dialogue on open issues as to the NFTL filing impropriety, with none of the "other causes" being discussed, nor even any indicated SO awareness of the required SNOD for 2011, with the predominant part of that session being the SO insistence on self-assessment

¹ Actual time of hearing phone call was only 5 minutes, per petitioner July 21, 2016 contemporaneous letter (Exhibit 26-P).

for all the indicated tax years as being the only consideration for NFTL filing validity and the seeking of a collection alternative basis.

35. As of the time of that CDP hearing, petitioners had contended that a statutory notice of deficiency was needed for all the tax years at issue, since, perhaps not being practicing tax attorneys, they were unaware of the self-assessment concept, which would be applicable only to tax years 2012-14, but not to 2011, for the reasons stated herein.

36. As stated in petitioners' June 20, 2016 letter to the SO, the requested optional relief sought by the taxpayer was simply the seeking of a determination as to whether the NFTL filing was appropriate and whether petitioners qualified for a withdrawal, and nothing more among the subjects available at petitioners' option. (Exhibit 25-P).

37. For all the above reasons, it is clear that the SO determination was preconceived prior to the five minute CDP phone hearing, in that there was no opportunity to consider all relevant issues previously raised by petitioners in their extensive CDP hearing application (Exhibit 24-P), as to which the SO had to be or should have been aware, and that the stated errors of fact and related conclusions indicated a less than proper review of the applicable IRS file prior to rendering such determination, in accordance with the applicable case law criteria cited in petitioners' opposition and cross-motion submission herewith.

38. Chronologically, then, to this point, at the time of the March 10, 2016 NFTL filing (Exhibit 2-P) and as of the August 11, 2016 Notice of Determination following the CDP hearing, the IRS position was that the additional tax "assessed" for 2011 was proper, and that no SNOD was required.

39. As to the supposed reason that the IRS never served the required notice of deficiency on petitioners for the claimed additional tax owed for 2011, in its October 17, 2016 answer to the petition herein, its counsel certified that grounded in fact was the allegation "that respondent's records indicated that they [petitioners] agreed to the assessment of additional tax made on July 27, 2015." Following the vehement denials by petitioners of any such agreement, IRS counsel subsequently investigated further and belatedly, in late 2017, conceded that any such assessment of additional tax, penalties and interest was erroneous and would be abated. This concession of error was further expanded upon in respondent's response to petitioners' amended and supplemental request for production of documents, dated November 21, 2017, and again in its motion herein, which states (p. 4, para. 12):

Respondent subsequently determined that he assessed the tax deficiency in taxable year 2011 in error. He abated this assessment on December 11, 2017.

However, as to penalties and interest chargeable to such erroneous assessment, which respondent's counsel had previously advised the undersigned would also be abated, it appears now that there is no intention to do so, which is clearly erroneous.

40. Such belated concession by the IRS, to the effect that no 2011 notice of deficiency was timely required, because the then additionally assessed tax, penalties and interest were subsequently abated as being erroneous, with such error having been recognized by the IRS for the first time following the long-expired three years statute of limitation, cannot retroactively change the IRS position on this issue to avoid the prior application of the statute of limitation, to that then pre-abatement required notice of deficiency. Indeed, both the earlier NFTL and SO CD hearing determination were flawed by virtue of relying upon that IRS error, and cannot now be revisited for correction.

41. The above noted IRS abatement of additional tax, penalties and interest leaves the filed Form 1040X intact on its initial self-assessed basis, as submitted, with all taxes shown thereon fully paid, and petitioners having incorporated all income, deductions, tax liability and payments shown on the original Form 1040, that were subsumed and incorporated to show corrected amounts, based on the inclusions of the allowable casualty loss for the federally declared disaster of Hurricane Sandy. As consistently stated in the applicable IRS Instructions for Form 1040X; and scrupulously followed by petitioners:

Form 1040 X will be your new tax return, changing your original return to include new information It is as if you were using the new information to complete your original return.

42. The fact that the IRS Small Business/Self Employed Compliance office, through its TCO, summarily rejected the casualty loss claim at what it considered to be the eleventh hour for assessment, and precluded petitioners, in the absence of an immediate assessment extension consent, from appealing that apparent claim denial on the merits (initially to the IRS Appeals Office and then to the Tax Court, upon a likely affirmance at the initial administrative level), created severe prejudice for petitioners in being unable to substantively challenge that apparent claim denial. Such petitioners' challenge right cannot now be resurrected in this proceeding, at a point when any such issues are time barred, and there exists no notice of deficiency or of determination concerning collection action, relating to any such claim denial, essential to invoke this Court's jurisdiction for *de novo* consideration of that claimed casualty loss.

43. The IRS NFTL for tax year 2011 is fatally flawed in a number of respects, including incorrect date of assessment and unpaid balance of assessment. Since the Form 1040X, as a self-assessed filing incorporating the originally filed Form 1040, was fully paid

without any assessment basis for the additional tax and penalties asserted by the IRS at the time of the NFTL filing, the absent predicate prior to any collection activities, including the NFTL, caused the NFTL to be invalid, and most certainly premature, and not in accordance with administrative procedures. Simply put, based on the above indisputable events, the NFTL is not proper in the absence of any tax amount to be liened.

As to Tax Years 2012, 2013 and 2014 Issues

44. As noted above, petitioners have belatedly recognized that the initial filings of their Form 1040 tax returns for tax years 2012, 2013 and 2014 constituted self-assessments of income taxes for each such year, as of the dates of such filings.

45. As noted above, petitioners timely filed their 2012 Form 1040 tax return and requisite schedules on the extended due date of October 15, 2013.

46. Similarly, petitioners timely filed their 2013 Form 1040 tax return and requisite schedules on the extended due date of October 15, 2014.

47. Similarly, petitioners timely filed their 2014 Form 1040 tax return and requisite schedules on the extended due date of October 15, 2015.

48. However, the IRS CP23 notices for each of the tax years 2012, 2013 and 2014 (Exhibits 4-P, 5-P and 6-P) all have identical text, styled as "Changes to your [year] Form 1040," with payment requested "to avoid additional penalty and interest charges," and notably affording a disagreeing taxpayer the opportunity to contact the transmitting office by phone or mail, with no mention whatsoever of either an absolute final demand for payment, let alone any right to an Appeals Office conference. Clearly, these were interim notices, inviting further dialogue, as

underscored in each of the subject years, following petitioners' disagreement letters for believed valid bases, with IRS recognition letters of entitlement to response as to the inquiries and issues raised.

49. In each and every instance of such "Change" notice, petitioners availed themselves of the right to so disagree, with stated detailed bases relating to penalty abatement economic hardship requests and manner of interest calculations, but there were very few substantive IRS responses, merely letters acknowledging receipt and indicating that the IRS needed more time to research and respond, sometimes following a hiatus of a year or more. Indeed, for each of the indicated tax years, there are currently outstanding IRS letters advising that those petitioners' inquiries would be responded to in a stated number of days, which has not occurred.

50. Many such IRS form response letters, some of which preceded the NFTL and others that were subsequently transmitted, included the following text (see, e.g., Exhibits/Tabs H-J to Exhibit 24-P).

We're working on your account. In order to provide a complete response, we need an additional 45 days to let you know what action we are taking on your account. *You don't need to take any further action now on this matter.*

There are many such IRS letters for each of tax years 2012, and 2014, as to which the undersigned can attest, but they are not included at this time to limit the volume of repetitive paper within the required response time.

51. Historically, where legitimate taxpayer issues are raised with the assigned local IRS office, warranting specific responses for expedited resolution, that process would be

formally or informally stayed pending issues resolution, and not at all interrupted in midstream by an IRS NFTL collection activity, which is absolutely what happened here. Illustratively, as to petitioners' penalty abatement request on its 2014 Form 1040, the IRS responded on May 19, 2015 to a "recent letter dated December 21, 2015 (five months earlier), advising that it had "suspended the processing of your case pending issue resolution." (Exhibit 27-P). Ironically, that belated IRS writing was transmitted two months following the NFTL filing. Additionally notable, in the post-NFTL filing period, IRS local offices continued to advise as to an intention to substantively respond to those open inquiries, which never happened.

52. For these reasons, the NFTL is premature as to tax years 2012, 2013 and 2014, and not in accordance with administrative procedures, warranting its withdrawal, and remand to the applicable local IRS offices for substantive consideration and response to legitimately raised taxpayer issues, prior to any invoking of collection activities until there are thereupon final assessment amounts established for each of the tax years 2012, 2013 and 2014.

53. Pursuant to Tax Court Rule 50(a), prior notice by phone and email has been given by the undersigned to respondent's counsel of the within cross-motion, and an objection to that cross-motion was confirmed.

WHEREFORE, based on all of the foregoing, petitioners request that this Court deny in all respects respondent's motion for summary judgment and grant petitioners' cross-motion for summary judgment, directing the withdrawal of the filed Notice of Federal Tax Lien, together with appropriate related relief.

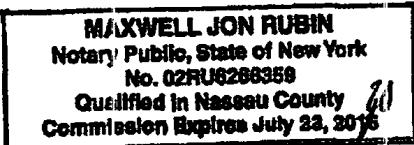


JACK S. KANNRY
Petitioner Pro Se

Sworn to before me this 1st day
of August, 2018



Notary Public



UNITED STATES TAX COURT DOCKET NO. 19091-16L
 PETITIONERS JACK S. KANNRY and JOYCE F. KANNRY
 MOTION OPPOSITION AND CROSS MOTION

SCHEDULE OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1-P (also Exhibit Nos. 13-R and 12R)*	August 11, 2016 IRS Appeals Office Notice of Determination Concerning Collection Action with July 26, 2016 Settlement Officer Case Memo - CDI
2-P (also Exhibit No. 1-R)	March 10, 2016 IRS Notice of Tax Lien Filing with March 1, 2016 Notice of Federal Tax Lien [Form 668(Y)(c)]
3-P	July 27, 2015 IRS Notice CP22E, Changes to 2011 Form 1040
4-P	December 9, 2013 IRS Notice CP23, Changes to 2012 Form 1040
5-P	December 8, 2014 IRS Notice CP23, Changes to 2013 Form 1040
6-P	December 7, 2015 IRS Notice CP23, Changes to 2014 Form 1040
7-P	IRS Publication 1, entitled "Your Rights as a Taxpayer, The Taxpayer Bill of Rights"
8-P	January 17, 2013 IRS letter coding account as victim of Hurricane Sandy
9-P	IRS Publication 2194, Disaster Resource Guide for Individuals and Businesses (p. 9 excerpt, Disaster Tax Losses)
10-P	January 13, 2012 IRS Instructions for Form 1040X (Rev. December 2011) (p. 1 excerpt, General Instructions, What's New headnote)
11-P	Petitioners' 2011 Form 1040X amended return filed with IRS

*Exhibit numbers in parentheses are identical documents submitted with respondent's motion
papers, but are included here for ease of reference

SCHEDULE OF EXHIBITS (cont'd.)

<u>Exhibit No.</u>	<u>Description</u>
12-P	Petitioners' personal check in payment of 2011 Form 1040X balance
13-P	November 14, 2013 IRS letter advising that 2011 1040X return casualty and loss selected for examination
14-P	November 14, 2013 to June 22, 2015 handwritten notes of IRS Tax Compliance Officer recording her time and activities on the 2011 1040X examination
15-P	May 13, 2015 IRS letter proposing full disallowance of claims following examination
16-P	May 20, 2015 petitioners' letter as to lack of understanding of proposed changes
17-P	May 28, 2015 IRS letter requesting petitioners' consent to extend assessment period
18-P	June 1, 2015 petitioners' letter requesting clarification of open items prior to any extension consent
19-P	IRS Publication 1035, Extending the Tax Assessment Period
20-P	August 10, 2015 petitioners' letter disagreeing with 2011 Notice CP 22E and requesting explanation for claimed additional tax, penalties and interest
21-P	February 23, 2016 IRS Holtsville letter transferring 2011 and other tax year accounts to Philadelphia office
22-P (also Exhibit No. 10-R)	June 9, 2016 and June 28, 2016 IRS Case Activity Record notes of Settlement Officer ("SO") prior to conducting CDP hearing claiming no need for 2011 Statutory Notice of Deficiency
23-P (also Exhibit No. 9-R)	April 13, 2016 IRS CDP History Sheet re petitioners' "other reasons" for NFTL being premature, with related cited correspondence
24-P (also Exhibit No. 2-R)	April 11, 2016 petitioners' Request for a Collection Due Process Hearing and attachments

SCHEDULE OF EXHIBITS (cont'd.)

<u>Exhibit No.</u>	<u>Description</u>
25-P	June 20, 2016 petitioners' letter to SO requesting withdrawal of NFTL
26-P	July 27, 2016 petitioners' post-CDP hearing letter to SO re propriety of NFTL withdrawal
27-P	May 19, 2016 IRS letter re suspension of processing case on 2014 Form 1040 pending resolution of penalties abatement issue

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JACK S. KANNRY & JOYCE F. KANNRY,

Petitioners,

PAPER FILED

v.

Docket No. 19091-16 L

COMMISSIONER OF INTERNAL REVENUE,

Respondent

**PETITIONERS' REPLY TO RESPONSE TO PETITIONER JACK S.
KANNRY'S MOTION FOR SUMMARY JUDGMENT**

CERTIFICATE OF SERVICE

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 JACK S. KANNRY and JOYCE F. KANNRY, *[Signature]*
 DEPUTY CLERK Docket No. 19091-16L

Petitioners,)
)
-against-)
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

**PETITIONERS' REPLY TO RESPONDENT'S RESPONSE ON
 PETITIONERS' MOTION FOR SUMMARY JUDGMENT**

Petitioners pro se, pursuant to August 14, 2018 order of this Court, submit this reply to respondent's response to petitioners' summary judgment motion, all in accordance with Tax Court Rule 121.

The detailed and documented facts and applicable law in petitioners' motion papers amply demonstrate entitlement to summary judgment, and are not at all overcome by respondent's misplaced efforts to even suggest any issues of material fact that could warrant denial of this motion. Indeed, respondent's mischaracterization of critical facts and its silence as to others, underscores the strength of the motion. Respondent's response is replete with error upon error by the IRS, some candidly and expressly admitted, in the events and writings leading up to and including the Settlement Officer ("SO") determination of issues.

Although it is true that, at the time of the CDP hearing, petitioners believed that notices of deficiency were required for all the tax years here involved, never having previously heard of the applicable "self-assessment" concept for filed returns, that is not at all on what this case turns. Clearly, there was such statutory notice of deficiency required for an IRS proposed

additional assessment for tax year 2011, and for 2012-2014, each such year had open issues being investigated by the assigned local IRS offices, as of the filing of the Notice of Federal Tax Lien, and even beyond, which still remained unresolved for final assessments determinations as of the CDP hearing.

Regrettably, the nineteen page motion response of respondents reiterates many of the same points multiple times. However, reiteration does not strengthen flawed arguments, and hence this reply will encompass a limited focus on the principal response assertions, generally in chronological order.

IRS Notice CP 22E and CP 23 Forms Are Not Final Assessment and Demand Notices of Tax Liability

Respondent contends that the IRS Notice CP 22E and CP 23 forms are "final notices" and demands for payment, and not "interim notices, inviting petitioners to begin a dialogue with respondent in the event that they disagree with them.", although recognizing the "[r]espondent would only remove or reduce penalties already assessed if petitioners could show reasonable cause." (Respondent Response, pp. 3-4, the first of a number of identical arguments in that writing.)

However, petitioners submit that it is not the rhetoric of party interpretation of documents that controls, but rather the content of the documents themselves and the related conduct of the parties that follows. Here, the IRS Notice CP 22E for 2011 (Exhibit 3-P or Exhibit 24-P, Tab A), Notice CP 23 for 2012 (Exhibit 4-P or Exhibit 24-P, Tab B), Notice CP-23 for 2013, (Exhibit 5-P or Exhibit 24-P, Tab C), and Notice CP 23 for 2014, (Exhibit 6-P or Exhibit 24-P, Tab D), all warrant review. Each such notice is identical in form and text, other than for the indicated tax year and amounts of tax, payments, penalties and interest. Each such notice was transmitted by

the IRS within a few weeks after the filing of the original return, except for tax year 2011, when it was transmitted a few weeks after the audit completion for petitioners' 2011 Form 1040X amended return, with the tax, penalties and interest amount encompassing the original Form 1040 as changed by the Form 1040X amended return. It is worth noting that each such notice was, the first IRS written advice to taxpayers of additional amounts claimed owed.*

These CP 22E and CP 22 notices are not at all entitled "Final Notice and Demand for Payment", as respondent would have this Court believe, but rather "Changes to your (tax year) Form 1040", followed by a headnote of "[w]hat you need to do immediately" if you agree with the changes, and then what to do "[i]f you don't agree with the changes", one option being "[y]ou can also contact us by mail", followed by the admonition that "[i]f we don't hear from you, we'll assume you agree with the information in this notice." There is also a provision, as conceded by respondent, that a possibility exists for "[r]emoval or reduction of penalties for reasonable cause", further attesting to the non-final nature of these notices.

In the instance of each such tax year, petitioners availed themselves of the disagreement option, largely relating to penalties, some of which were substantial, based on permitted economic hardship reasons, as well as requesting interest recalculations, since certain tax payments were not made linearly

In recognizing the propriety of such disagreement inquiries, the assigned IRS local offices responded in writing several, if not many, times, generally indicating a need for more

* In apparent consistent recognition that a final assessment for tax year 2011 could only be made following the filing of petitioners' Form 1040X amended return, which subsumed and incorporated the original Form 1040 for 2011, respondent advises that its December 17, 2012 notice for the 2011 Form 1040 "is not part of the record of this case." (Respondent's response, p. 4, footnote 3) since it was obviously superseded by the July 27, 2015 notice, encompassing both the original Form 1040 and amended 1040X for that tax year, and showing a proposed combined tax liability.

time to investigate and respond, an/or to transfer the matter to a different IRS office, but substantive responses were virtually non-existent. Exhibits 20-P, 21-P and 27-P are illustrative examples of such correspondence, as well as those cited in the CDP hearing application (Exhibit 24-P, attachment p.2 and included referenced correspondence). Significantly, much of such IRS correspondence indicated that petitioners need take no further action while the matter was under consideration and, in at least one instance (Exhibit 27-P) advised as to a suspension of proceedings during the pendency of such case. Although no such raised issues were dispository resolved through that extensive correspondence exchange, to suggest, as does respondent, that the IRS was not inviting dialogue to resolve open issues and had already finalized taxable amounts, is belied by the structure and text of its form, and subsequent correspondence.

Additionally noteworthy and consistent on this subject is The Taxpayer Bill of Rights (Exhibit 7-P), as previously discussed (Kannry motion affidavit, p. 3, para. 7). Moreover, as also stated in that affidavit (p. 3, para. 6),

...at a February 16, 2017 meeting at the IRS office between the undersigned petitioner and IRS counsel Frederick C. Mutter, Esq., such respondent's counsel confirmed petitioners' expressed view that such CP 22E and CP 22 notices did not constitute assessment notices, which would otherwise reflect IRS final tax determinations as a prelude to collection activities, as distinct from initially proposed changes with which the taxpayer had the right to disagree.

Perhaps quite understandably, respondent's response is silence as to the above.

The 1-1/2 Year Audit That Deprived Petitioners of Their Right to Challenge a Deduction Denial for 2011

The factual and documented exposition of the IRS audit examination from 2013 to 2015 for petitioners' 2011 claimed casualty loss deduction, as set forth in petitioners' supporting affidavit on this summary judgment motion (pp. 6-8 para. 17-19), cannot be disputed and is essentially ignored in respondent's response to such motion. Rather, respondent briefly addresses this subject, as follows (Respondent's response, pp. 5-6):

According to the certified transcript, petitioners made a payment on April 28, 2013, which made their total payments for taxable year 2011 equal the total tax they reported due on their Form 1040X (p. 5, lines 2-5).

While that is correct, it is incomplete. As set forth in petitioners' supporting affidavit, "[a]t that point, then, pursuant to the above noted IRS 1040X instructions, all income taxes for 2011 had been fully paid." (p. 6, para. 16). Such IRS instructions for Form 1040X, applicable to tax year 2011 (Exhibit 10-P), as quoted from in the motion supporting affidavit (p. 5, para. 13), states "[i]t is as if you were using the new information to complete your original return." Indeed the actual Form 1040X (Exhibit 11-P) is consistently structured, including columns for "Original amount", "Net change" and "Correct amount" for the categories of "Income and Deduction", "Tax Liability", "Payment" and "Refund or Amount you Owe". Clearly, then, the Form 1040X incorporated, subsumed and fully considered and accounted for the original Form 1040 tax liability in this amended return. By virtue of this, in the absence of the subsequent audit, tax year 2011 would thereby have been a closed matter with the IRS.

As to the conduct of the audit, respondent's response advises that:

On May 13, 2015, respondent's Tax Compliance Officer ("TCO") assigned to the case sent petitioners a letter disallowing in full the casualty loss petitioners claimed on the Form 1040X." (p. 5,

first full para.)

In that writing, which respondent has correctly identified as Exhibit 15-P, he omits to note that the TCO checked box states, “[f]ull disallowance, as shown in the enclosed examination report or at the end of this letter.” Not only was there no examination report enclosed with such letter, but the two attachments to such letter, Form 2297, Waiver of Statutory Notice of Claim Disallowance and Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit, both stated that the “Amount of Claim Disallowance” was “\$21,214.00”, and not the significantly higher amount of claimed casualty loss deduction, as reflected in the 2011 Form 1040X (Exhibit 11-P, first page, line 2). Obviously this confusing missive from the TCO warranted clarification and explanation, which is precisely what petitioners sought in their May 20, 2015 letter (Exhibit 16-P), regrettably ignored and never responded to by the TCO or other IRS representative.

Respondent’s response touches on this subject by summarily stating petitioners’ position as being “that the TCO...failed to explain the reasons for disallowing the casualty loss,” (p.5, second full para.), and then as a supposed explanation:

...the TCO communicated with petitioners on May 28, 2015, and June 18, 2015. The TCO informed petitioners that respondent disallowed the casualty losses claimed on the Form 1040X.

However, what respondent does not inform this Court is that neither of those writings (the May 28, 2015 TCO letter being Exhibit 17-P) even mentions the petitioners’ unanswered request for clarification and explanation, as requested in the earlier May 20, 2015 letter (Exhibit 16-P), nor petitioners’ June 1, 2015 letter repeating such request (Exhibit 18-P), also consistently ignored by the TCO.

In a final rather incredible commentary on the audit process, respondent's response states that:

There is a subsequent entry in the TCO case history, dated June 22, 2015, which erroneously identifies the case as agreed. ... (and that) respondent erroneously closed the examination as "agreed" (P. 6, lines 1-3 and 6-7).

While respondent's reference to the TCO overall case history is correct (Exhibit 14-P), the final page of that document contains the TCO summary of 2.0 hours as her final time expenditure for June 22, 2015, which absolutely includes no such notation regarding "the case as agreed", which in any event would have been nonfactual. As to any such proposed conclusion of "agreed" having been erroneous, that is most certainly true, but the TCO never recognized or otherwise addressed that issue.

Bearing in mind that there was never any IRS clarification and explanation of the claimed casualty loss deduction denial amount or basis, let alone a timely Notice of Determination as to such denial to create an ability of petitioners to challenge such holding in a proceeding before this Court, there was one final IRS step in the closing of this audit process. That was the July 27, 2015 Notice CP 22E for 2011 (Exhibit 3-P or Exhibit 24-P, Tab A), which respondent characterizes as an "assessment of a tax deficiency as well as an addition to tax for failure to pay and accrued interest." (Respondent's response, p. 6, lines 7-9). To the contrary, it is beyond dispute that such notice is not an "assessment", but merely a proposed assessment, requiring a Notice of Deficiency, which then would have enabled petitioners to challenge same in Tax Court or, failing that petitioners' election within 90 days, such notice would have ripened into an assessment, enabling the IRS to initiate its collection remedies.

When petitioners, by letter dated August 10, 2015 (Exhibit 20-P), sought an explanation for the claimed additional tax, penalties and interest set forth in the 2011 Notice CP 23, the IRS response was absolute silence, again the antithesis of its obligations under the Taxpayer Bill of Rights (Exhibit 7-P).

Since there was neither a Notice of Determination nor Notice of Deficiency as to the IRS claimed casualty loss deduction for 2011, the subsequent filing of the NFTL, as to 2011, which included a proposed but non-assessed additional tax for that year, was a prohibited premature and invalid collection activity.

The Settlement Officer's Determination Sustaining the NFTL Filing Was Fatally Flawed

There then followed a hiatus of some seven months, without any IRS explanation of the claimed additional tax, penalties and interest for 2011, and with interim periodic letter from IRS local offices as to its ongoing review of petitioners' open issues for tax years 2012-1014, generally advising as to further time needed for consideration of such issues.

By March 10, 2016 Notice of Federal Tax Lien Filing and Your Rights to a Hearing
Under IRS 6320 (Exhibit 2-P), applicable to tax years 2011, 2012, 2013 and 2014, petitioners were advised as to "the right to a hearing with us to appeal this collection action" by the timely filing of a Form 12153, Request for a Collection Due Process ("CDP") hearing. Although petitioners were unfamiliar with this process, having never previously participated in a CDP hearing, since this appeared to be the only IRS procedure available to appeal any of the previously unanswered issues, such submission was timely made on August 11, 2016 (Exhibit 24-P).

The IRS ground rules for a CDP hearing were set forth in a June 9, 2016 letter from the assigned Settlement Officer ("SO"), June L. Lee (Respondent Exhibit 7-R). The indicated relevant issues that petitioners sought to discuss included:

2. Challenges to the appropriateness of collection action.
If this is a lien hearing, you may ask us to determine if the notice of lien filing was appropriate and you qualify for a notice of lien withdrawal or other line options.

By letter dated June 20, 2016 (Exhibit 25-P), petitioners advised the SO that the only issue sought to be considered at the CDP hearing was the propriety of the NFTL filing, as being a premature collection activity and invalid, since there had been no final assessment determinations made for any of the four tax years, yielding the conclusion that the NFTL was invalid. As noted earlier, in the instance of tax year 2011, there had been no prior statutory Notice of Deficiency, and tax years 2012-2014 each remained with open issues under consideration by local IRS offices, which warranted resolution for final assessments determination. In view of those circumstances, it would have been premature to discuss at the CDP hearing any collection alternatives.

Insofar as the criteria for conduct of the SO in the CDP process, it is well established that it is not merely what is said by petitioners at the phone hearing that needs be considered, but also petitioners' prior written admissions and the applicable IRS records. In this regard, the Court's attention is addressed to petitioners' motion (pp. 2-3) and cases cited therein, holding that it is not just issues raised at the CDP hearing to be considered, but also "other matters that were...otherwise brought to the attention of appeals" and "information that was before the IRS when making the challenged rulings" (Murphy, *supra*, motion, p. 2). Additionally the Appeals

Officer cannot rely solely on the tax transcripts where a taxpayer identifies an irregularity (Peterson, *supra*, motion, p. 3), such as the lack of notice of deficiency.

As to what occurred at the brief CDP phone hearing, participated in solely by the SO and undersigned petitioner, respondent's counsel, who was not present, cannot overcome the factual statements by the undersigned petitioner as to that phone conference by surmise and conjecture, nor has any declaration been provided by the SO to offer any different or other facts.

A principal argument in respondent's response is that petitioners "specifically waived" any issues unrelated to the lien withdrawal issue (p. 12, first para). However, other than waiver at that time as to consideration of collection alternative measures, which would have been premature, the remaining issues were obviously subsumed in the NFL withdrawal issue, i.e., the lack of a statutory notice of deficiency as to tax year 2011 and the other issues raised in the prior CDP hearing written submission as to tax years 2012-2014 (Exhibit 4-P, Attachment, p.2, second and third paragraphs), and also should have been recognized by the SO in the pre-hearing CDP history sheet dated April 13, 2016 (Exhibit 23-P), some 2-1/2 months prior to the CDP hearing. The applicable facts are further elaborated upon in petitioners' supporting affidavit on this motion (p. 11, para. 32-33).

Another issue involving the inadequate or improper conduct of the SO, of pre-eminence in this matter, relates to what the respondent's response refers to as "harmless error", citing the Nestor decision (p. 17), which has no application whatsoever to this situation. The chronological facts of this critical IRS error are set forth in petitioners' supporting affidavit on this motion (pp. 10-11, para. 29-31). Of particular importance here is the SO June 28, 2106 entry in the Case Activity Record Print (Exhibit 22-P), a full month before the CDP hearing, that "[1]he taxpayer

would not get a SNOD when they agreed to the assessment." Not only was there no such agreement, but petitioners were not aware of such IRS position at the time of the CDP hearing, nor did the SO even mention that supposed "fact", nor did petitioners become aware of that pre-hearing SO writing until a full year later during discovery in this proceeding. Thus, there was no basis for petitioners raising and challenging this erroneous IRS position at that time because they had no knowledge of same. As stated in petitioners' supporting affidavit on this motion (p. 13, para. 39), it was not until petitioners received the October 17, 2016 answer to the petition herein, that petitioners initially became aware of such erroneous IRS position.

In an understatement, because of its ramification in this case, respondent's response concedes and "recognizes that the settlement officer should have investigated this assessment more fully" (p. 17 last para.), which is consistent with the above review of the proper scope of the SO activities in connection with a CDP hearing. Although respondent's counsel did further investigate the supposed agreement by petitioners to accept the proposed TCO "deficiency", following a challenge by petitioners upon learning of this unsupportable conclusion, and did so, belatedly, in 2017, abating such proposed tax as erroneous, it was too little and too late for purposes of this proceeding and the irreparable prejudice caused to petitioners.

Such erroneous IRS earlier position was still in effect as of the March 10, 2016 NFTL filing (Exhibit 2-P) and as of the July 26, 2016 CDP hearing, leading to improper and invalid conclusions in both instances as to tax year 2011. The detailed facts showing that this was not merely "harmless error" are set forth in petitioners' supporting affidavit on this motion (pp. 13-14, para. 39-42) and cannot be, nor have they been, seriously challenged by respondent on this motion.

With respect to 2011, where no further tax is now due, inasmuch as the Form 1040X incorporated, subsumed and fully accounted for the original Form 1040 tax, as well, there is absolutely no basis for remand in 2011 under the inapposite Nestor case. The three year statute of limitations for full and proper assessment has long since expired, such that the NFTL is absolutely invalid as to tax year 2011. On the other hand, as to tax years 2012-2014, remand to the applicable local IRS offices for resolution of open issues leading to final assessments is appropriate, with the NFTL being premature as to those years, and hence invalid.

The "Legal Analysis" in Respondent's Response Does Not Properly Address the IRS Errors in this Case

In a section of respondent's response entitled "Legal Analysis" (p. 11 et seq.), the criteria for summary judgment are set forth, with which petitioners have no quarrel. As applied here, the documented facts supporting this motion amply demonstrate the propriety of this remedy. However, such "Legal Analysis" totally fails to recognize the requirements for a proper assessment, which transcends the simple self-assessment of an original tax filing, when intervening events warrant more.

Thus, in the instance of tax year 2011, when the IRS TCO denied petitioners' claim for a casualty loss deduction, which most certainly would have affected the earlier self-assessment amount, an IRS obligation arose to issue a notice of determination or of deficiency, as to an increased tax to then intended to be assessed, but, most importantly, which notice would have provided petitioners with a basis for judicial challenge of such deduction denial. No such notice was ever issued, timely or otherwise.

Further, when the IRS transmitted its Notice CP 22E on July 27, 2015 (Exhibit 23-P), not as a final assessment, as discussed at length earlier, but rather simply as a notice of intended tax, penalty and interest charge for tax year 2011, for which petitioners sought a never forthcoming explanation, that warranted a statutory notice of deficiency, which would have thereby triggered a judicial challenge basis for petitioners. That point was further underscored by the SO in her Case Activity Record Print (Exhibit 22-P) in preparation for the CDP hearing, wherein she stated “[t]axpayers would not get a SNOD when they agreed to the assessment.” (Exhibit 22-P, June 28, 2016 entry). Since it is beyond dispute that there was absolutely no such assessment agreement, absent that error on the part of the SO, she is in effect advising that a SNOD would have been required, but of course was never transmitted.

Contrary to the contention that “petitioners specifically directed the settlement officer in their June 20, 2016 letter to focus her attention on the lien withdrawal issue.” (Respondent’s response, p. 12, final para.), and the misplaced conclusion that she “could not have acted unreasonably when she did not consider issues that petitioners specifically waived”, the undeniable facts belie such contentions. Petitioners could not “direct” the SO as to anything, merely indicating that the permitted subject of lien withdrawal was intended to be the desired focus of the CDP hearing, which subject of necessity subsumed and included the related subjects of incomplete 2012-2014 assessments, since local IRS offices had ongoing investigations to consider open issues repeatedly raised by petitioners as to which the SO should have been aware, and, in at least one instance advised that no collection proceedings would go forward pending final determinations of such issues, all as previously discussed earlier in this reply. Obviously, there was no waiver here, specific or otherwise.

Conclusions

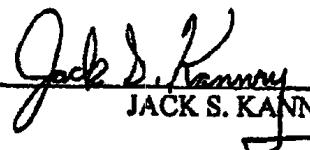
Clearly, the IRS errors by its various reviewers, as reflected in the record, coupled with regrettably consistent periods of silence in response to legitimate petitioners' inquiries, which have predominantly been ignored in respondent's response, suggest a trampling upon express taxpayer rights, here, rather than proper and orderly statutory compliance, which respondent would have this Court believe occurred in this case. It plainly and simply did not.

Beyond the above compelling facts, supportive documentary exhibits and applicable law, many of which are from certified representations by respondent's counsel and IRS documents, and including numerous errors by the IRS at the various levels of review, there are further unrefutable factual statements and documents in petitioners' motion papers, which have not at all been addressed in respondent's response, but should be evident to the Court upon considering this motion. Such silence in respondent's response leads to likely conclusions to be drawn in petitioners' favor, and thereby strengthens the viability of this summary judgment motion.

WHEREFORE, based on all of the foregoing, petitioners request that this Court grant in all respects petitioners' motion for summary judgment, directing the withdrawal of respondent's filed Notice of Federal Tax Lien, as being totally invalid and not ripe for this or any other collection activity with respect to tax year 2011 and warranting remand of the matter to the local IRS offices for further review and resolution of the remaining open issues for tax years 2012,

2013 and 2014, for determination of final assessable tax for those years, together with such other and further related relief deemed appropriate by this Court.

JACK S. KANNRY and JOYCE F. KANNRY
Petitioners Pro Se

By: 

JACK S. KANNRY

Dated: New York, New York
August 21, 2018

Docket No. 19091-16L

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Petitioners' Reply to Respondent's Response on Petitioners' Motion for Summary Judgment Against Respondent, was served on respondent by mailing the same on August 21, 2018 in a postage paid wrapper addressed as follows:

William M. Paul, Esq.,
Acting Chief Counsel
Internal Revenue Service
Attn: Frederick C. Mutter, Esq.
Tax Court Bar No. MF 0417
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Jack S. Kannry
Petitioner Pro Se

Dated: New York, NY
August 21, 2018