NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-3108

ANASTASIOS M. SMALIS,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court
(U.S. Tax Court No. 21-5882)
Tax Court Judge: Honorable Travis A. Greaves

Submitted Pursuant to Third Circuit LAR 34.1(a)
November 21, 2024
Before: RESTREPO, MATEY, and CHUNG, Circuit Judges

(Opinion filed: December 18, 2024)

OPINION*

PER CURIAM

Anastasios Smalis appeals pro se from the Tax Court's dismissal of his petition for lack of jurisdiction and the denial of his motion to vacate or revise the decision. We will affirm.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

I.

In 2021, Smalis filed a petition in the Tax Court to challenge Internal Revenue Service ("IRS") actions allegedly taken for his 1992 tax deficiencies. He challenged a notice of deficiency, a notice of determination concerning a collection action, a notice of final determination for disallowance of interest abatement, and a notice of determination concerning relief from joint and several liability. He claimed that the IRS improperly mailed notices to a prior address even though he submitted a change of address form in 1995, that he was deprived of adequate notice in violation of due process, and that the IRS abused its discretion by refiling a lien.

Smalis did not attach any of the alleged notices to his petition. Instead, he attached a balance reminder from the IRS. He also provided a Collection Appeal Request form he completed in 2016. And he submitted records showing that in May 2017, the IRS issued notice of a federal tax lien for the tax period ending in 1992, assessed in 1994. Additionally, he attached his 2020 Social Security Benefit statement showing a garnishment or levy on his benefits.

The Commissioner of Internal Revenue moved to dismiss for lack of jurisdiction. The Commissioner stated that the IRS had not sent Smalis any of the alleged notices he purported to challenge in his petition, and that Smalis had not produced any notice or determination sufficient to confer the Tax Court with jurisdiction. In response, Smalis argued that the IRS violated due process by seizing his assets without providing him adequate notice and an opportunity to dispute his liability.

The Tax Court concluded it lacked jurisdiction to review the petition and dismissed the case. Smalis moved for reconsideration, which the Tax Court construed as a motion to vacate or revise the decision under Tax Court Rule 162. Smalis asserted he was "never served with a copy of deficiency or a determination relating to his case," and he was entitled to a hearing to dispute the IRS's collection. The Tax Court denied the motion, and Smalis appealed.

II.

We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review the Tax Court's dismissal for lack of jurisdiction de novo, and we review its factual findings for clear error. Culp v. Comm'r, 75 F.4th 196, 200 (3d Cir. 2023). We review the Tax Court's denial of a motion to vacate for abuse of discretion. Drobny v. Comm'r, 113 F.3d 670, 676 (7th Cir. 1997).

The party asserting Tax Court jurisdiction has the burden to establish it. See Shands v. Comm'r, 111 F.4th 1, 7 (D.C. Cir. 2024). The Tax Court's jurisdiction is limited to what is expressly authorized by Congress. See 26 U.S.C. § 7442; Sunoco Inc. v. Comm'r, 663 F.3d 181, 187 (3d Cir. 2011). For example, Congress has authorized the Tax Court to review deficiency determinations. See generally 26 U.S.C. § 6213.[1] But the Tax Court acquires jurisdiction to review a deficiency determination only after the IRS issues a notice of deficiency. Dudley v. Comm'r, 258 F.2d 182, 183 (3d Cir. 1958);

[1] A tax "deficiency" occurs when the tax amount imposed by the IRS exceeds the tax amount reported by the taxpayer on his return. See Lazore v. Comm'r, 11 F.3d 1180, 1188 (3d Cir. 1993); 26 U.S.C. § 6211.

see also Delman v. Comm'r, 384 F.2d 929, 934 (3d Cir. 1967) (stating that the notice of deficiency is the taxpayer's "ticket" to Tax Court); Est. of Davenport v. Comm'r, 184 F.3d 1176, 1182 n.2 (10th Cir. 1999) ("A valid deficiency notice is a prerequisite to Tax Court jurisdiction."); Tax Court Rule 13(a). Similarly, the Tax Court may review the IRS's collection activities, see 26 U.S.C. § 6330(d), but only after the IRS issues a notice of determination, see Adolphson v. Comm'r, 842 F.3d 478, 480 (7th Cir. 2016). Additionally, the Tax Court lacks jurisdiction to review a decision not to abate interest until the IRS has issued a determination not to abate interest. See 26 U.S.C. § 6404(h); Williams v. Comm'r, 131 T.C. 54, 55 (2008); cf. Wright v. Comm'r, 571 F.3d 215, 219-20 (2d Cir. 2009) (holding that the Tax Court had jurisdiction to determine whether the taxpayer was entitled to an abatement of interest because the IRS had issued a notice of determination that did not grant abatement). And the Tax Court may review a determination not to grant relief from joint and several liability under 26 U.S.C. § 6015 only "if an individual files a petition in the court no later than ninety days after the IRS mails its notice of final determination." Rubel v. Comm'r, 856 F.3d 301, 305 (3d Cir. 2017).

The parties do not contest that Smalis did not receive the alleged notices, and the IRS determined that it never sent the challenged notices, nor any document that could qualify as one. Without providing such a notice, Smalis did not meet his burden to establish that the Tax Court had jurisdiction over his petition. See Shands, 111 F.4th at 7. Smalis asserts that because he never received a notice, he had no opportunity for a collection due process hearing, and thus he was deprived of due process. Even if we assume Smalis is correct, without a notice of deficiency or determination, the Tax Court had no jurisdiction over his petition. This remains true even in circumstances where the Commissioner is at fault for failing to carry out the statutory duty to issue notice. See Adolphson, 842 F.3d at 486; see also Musso v. Comm'r, 531 F.2d 772, 774 (5th Cir. 1976) (explaining that the Tax Court has no equity powers).

Thus, the Tax Court did not err by dismissing Smalis's petition for lack of jurisdiction. And because Smalis re-argued the same points in his post-decision motion, the court did not abuse its discretion by denying his motion to vacate or revise the decision. Accordingly, we will affirm the Tax Court's judgment.

United States Tax Court
Washington, DC 20217

ANASTASIOS M. SMALIS,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 5882-21.

ORDER

On July 19, 2023, the Court entered an Order of Dismissal for Lack of Jurisdiction in this case on the ground that petitioner failed to carry his burden to establish that he had been issued a notice sufficient to confer jurisdiction on this Court. On August 16, 2023, petitioner filed a Motion for Reconsideration of Order[1] under Rule 161.[2] Petitioner's motion is more properly viewed as a Motion to Vacate or Revise Decision under Rule 162, thus the Court will recharacterize petitioner's motion. For the reasons set forth below, we deny petitioner's motion.

The decision to grant or deny a motion under Rule 162 lies within the Court's discretion. *See Kun v. Commissioner*, T.C. Memo. 2004-273, slip op. at 5, *aff'd*, 157 F. App'x 971 (9th Cir. 2005). Rule 162 authorizes a party to file a motion to vacate or revise a decision, with or without a new or further trial, within 30 days after the decision has been entered, unless the Court shall otherwise permit. Motions to vacate or revise a decision generally are not granted without a showing of unusual circumstances or substantial error, such as mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, or other reason justifying relief. *See Brannon's of Shawnee, Inc. v. Commissioner*, 69 T.C. 999, 1000–01 (1978); *Mitchell v. Commissioner*, T.C. Memo. 2013-204, at *8, *aff'd*, 775 F.3d 1243 (10th Cir. 2015). A motion under Rule 162 is not the appropriate forum for rehashing previously rejected legal arguments. *See Stoody v. Commissioner*, 67 T.C. 643, 644

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[1] Petitioner's motion is stylized as a Motion for Leave to File Motion for Reconsideration of Order. Petitioner's motion was timely made and therefore, we refer to this motion as Motion for Reconsideration of Order.

[2] Unless otherwise indicated, Rule references are to the Tax Court Rules of Practice and Procedure.

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(1977).

In his motion, petitioner does not point to unusual circumstances or substantial error that would warrant vacatur. Rather, petitioner merely revisits his previously considered argument that the Court should review respondent's alleged failure to issue a notice of deficiency or notice of determination. Petitioner fails to attach any notices sufficient to confer jurisdiction to his motion and fails to allege any other facts that could indicate jurisdiction. We previously weighed and considered petitioner's argument regarding jurisdiction, and his motion is not the appropriate forum to renew this rejected argument. Petitioner's motion fails to satisfy the high standard for vacating an order of this Court, and we will deny petitioner's motion.

Upon due consideration and for cause, it is

ORDERED that petitioner's Motion for Reconsideration of Order under Rule 161 is recharacterized as a Motion to Vacate or Revise Decision under Rule 162. It is further

ORDERED that petitioner's Motion to Vacate or Revise Decision under Rule 162 filed August 16, 2023, is denied.

(Signed) Travis A. Greaves
Judge

United States Tax Court

Washington, DC 20217

ANASTASIOS M. SMALIS,		
Petitioner		
v.		Docket No. 5882-21.
COMMISSIONER OF INTERNAL REVENUE,		
Respondent		

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

Pending before the Court is respondent's Motion to Dismiss for Lack of Jurisdiction, filed June 22, 2021. Therein, respondent requests that this case be dismissed for lack of jurisdiction on the grounds that no notice of deficiency has been sent to petitioner, nor has respondent made any other determination that would permit petitioner to invoke the jurisdiction of this Court.

Background

On February 8, 2021, petitioner filed the Petition to commence this case (Petition) with respect to his 1992 tax year (year at issue). Line 1 of the Petition indicates that petitioner challenges a notice of deficiency, a notice of determination concerning collection action, a notice of final determination for disallowance of interest abatement, and a notice of determination concerning joint and several liability under section 6015. Petitioner did not attach to his Petition a copy of a notice of deficiency or a determination relating to any of the challenges he listed in the Petition. Instead, petitioner attached a Notice CP71A, Annual Balance Due Reminder, dated November 23, 2020. This notice explains that petitioner should pay the amount due of $1,757,458 by December 9, 2020, to avoid additional penalty and interest charges.[1] Petitioner alleges that respondent improperly mailed notices to a prior address, despite submission of a Form 8822, Change of Address, on March 3, 1995.

On June 22, 2021, respondent filed a Motion to Dismiss for Lack of Jurisdiction (Motion) on the ground that petitioner failed to identify a notice sufficient to invoke our jurisdiction with respect to his tax liability for the year at issue. On June 29, 2021, this Court ordered petitioner to file an objection to the

[1] All dollar amounts are rounded to the nearest dollar.

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Motion by July 20, 2021. Between July 2, 2021, and October 20, 2022, this Court granted four Motions for Extension of Time filed by petitioner based, among other reasons, on the processing of the petitioner's Freedom of Information Act (FIOA) request. In this FIOA request, petitioner requested the names of Federal Bureau of Investigation (FBI) and Internal Revenue Service (IRS) agents who allegedly "confiscated personal records" and had actual notice of his change of address after filing a Form 8822, Change of Address, with the IRS on March 3, 1995.[2]

On January 11, 2023, petitioner filed an Objection to the Motion (Objection). Petitioner did not include a copy of a notice of deficiency or determination relating to any of the challenges he listed in the Petition. Petitioner attached a Form 9423, Collection Appeals Request, dated December 3, 2016.

Discussion

The Tax Court is a court of limited jurisdiction, and we may exercise our jurisdiction only to the extent authorized by Congress. *See* I.R.C. § 7442; *Naftel v. Commissioner*, 85 T.C. 527, 529 (1985).[3] Where this Court's jurisdiction is duly challenged, as here, our jurisdiction must be affirmatively shown by the party seeking to invoke that jurisdiction. *See David Dung Le, M.D., Inc. v. Commissioner*, 114 T.C. 268, 270 (2000), *aff'd*, 22 F. App'x 837 (9th Cir. 2001); *Fehrs v. Commissioner*, 65 T.C. 346, 348 (1975). To meet this burden, the party "must establish affirmatively all facts giving rise to our jurisdiction." *David Dung Le, M.D., Inc.*, 114 T.C. at 270; *Wheeler's Peachtree Pharmacy, Inc. v. Commissioner*, 35 T.C. 177, 180 (1960). Petitioner invoked our jurisdiction and therefore bears the burden of establishing jurisdiction.

In a case seeking redetermination of a deficiency, our jurisdiction depends upon the issuance of a valid notice of deficiency and the timely filing of a petition. *See* Rule 13(a) and (c); *Mulvania v. Commissioner*, 81 T.C. 65, 67 (1983); *Naftel*, 85 T.C. at 530; *David Dung Le, M.D., Inc.*, 114 T.C. at 270; I.R.C. §§ 6212, 6213(a) (stating a taxpayer generally has 90 days from the mailing of a notice of deficiency to file a petition with this Court), and 6214. In a case regarding collection due process, our jurisdiction is predicated upon the issuance of a notice of determination and the filing of a timely petition. *See Smith v. Commissioner*, 124 T.C. 36, 38 (2005); *Sarrell v. Commissioner*, 117 T.C. 122, 125 (2001); I.R.C. § 6330(d) (providing that a taxpayer generally has 30 days from the final determination to petition this Court). With respect to an appeal of a determination not to abate interest, our jurisdiction depends on the issuance of a final determination not to abate interest and timely filing of a

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[2] Lien documents attached to the Petition indicate the IRS assessed the tax liability for the year at issue on December 5, 1994.

[3] Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

petition for review. *See Williams v. Commissioner*, 131 T.C. 54, 56 (2008); *Bourekis v. Commissioner*, 110 T.C. 20, 26 (1998); I.R.C. § 6404(h) (setting a 180-day filing deadline after the mailing of the final determination). Finally, regarding an appeal of a determination not to grant relief from joint and several liability under section 6015, jurisdiction is predicated on the issuance of a final determination and the taxpayer filing no later than 90 days after the determination. *See* I.R.C. § 6015(e)(1)(A)(ii); *James v. Commissioner*, T.C. Memo 2021-7, at *7 n.3; *Gormeley v. Commissioner*, T.C. Memo. 2009-252, at *7.

In his Motion, respondent asserts that he has conducted a diligent search of his records in an attempt to determine whether a notice of deficiency has been issued to petitioner, and that, based on that search, he has determined that no such notice has been issued. Moreover, respondent further asserts that, based on the foregoing search, no other determination has been made by respondent that would permit petitioner to invoke the jurisdiction of this Court.

Although the Tax Court Rules of Practice and Procedure require that a petition includes the notice upon which jurisdiction is based, neither the Petition nor Objection includes any such notice. *See* Rules 34(b)(8), 281(b)(4)(B), 321(b)(2), and 331(b)(8). The Annual Balance Due Reminder notifies the taxpayer of an outstanding tax liability, which is not a notice that would confer jurisdiction on this Court. Similarly, the Collection Appeals Request is a taxpayer request form for IRS action, and therefor is not a notice that would confer jurisdiction on this Court.

Even if the assertions contained in the FIOA request are true and the FIOA request is granted, petitioner has not shown how this information will enable him to affirmatively establish that any notice was issued by respondent and how the Petition was timely filed. Petitioner has failed to "establish affirmatively all facts giving rise to our jurisdiction." *See David Dung Le, M.D., Inc.*, 114 T.C. at 270. Accordingly, we must grant respondent's Motion and dismiss this case for lack of jurisdiction.

Upon due consideration it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction, filed on June 22, 2021, is granted, and this case is dismissed for lack of jurisdiction.

(Signed) Travis A. Greaves
Judge

ANASTASIOS M. SMALIS,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 23-3108

ANASTASIOS M. SMALIS,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

U.S. Tax Court No. 21-5882

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, and CHUNG, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: October 3, 2025
Tmm/cc: Anastasios M. Smalis, I
Marie Wicks, Esq.
Ellen Page DelSole, Esq.

Additional material from this filing is available in the Clerk's Office.