

COPY

UNITED STATES TAX COURT

COPY

JOHN [REDACTED] RGE [REDACTED],

Petitioner,

v.

Docket No. [REDACTED]

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

MOTION TO DISMISS FOR LACK OF JURISDICTION

RESPONDENT MOVES, pursuant to T.C. Rule 53, that this case be dismissed for lack of jurisdiction upon the ground that there is no notice of determination issued to petitioner for taxable years 1999, 2000, 2001, and 2002, nor has respondent made any other determination with respect to taxable years 1999, 2000, 2001, and 2002, that would confer jurisdiction on this Court.

IN SUPPORT THEREOF, respondent respectfully states:

1. On [REDACTED] 2007, petitioner filed a petition for lien and levy action.

2. A Letter 3172(DO), Notice of Federal Tax Lien and Your Right to a Hearing under I.R.C. 6320 (CDP Lien Notice) was sent by certified mail to petitioner on [REDACTED] 2006, to an address at [REDACTED] Blvd., [REDACTED] California [REDACTED] 53 [REDACTED] with respect to his unpaid Federal income tax liabilities for taxable years 1999, 2000, 2001, and 2002. A copy of the Letter 3172(DO) is attached hereto as Exhibit A.

3. On or around [REDACTED] 2006, petitioner filed a Form 12153, Request for a Collection Due Process Hearing, a copy of which is attached hereto as **Exhibit B**. The request was not filed within the 30-day period for requesting a collection due process hearing. I.R.C. § 6320(a)(3).

4. On [REDACTED] 2007, petitioner was issued a Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330 (Decision Letter), a copy of which is attached hereto as **Exhibit C**.

5. The Court is a court of limited jurisdiction, and can only hear cases to the extent authorized by Congress. I.R.C. § 7442; Naftel v. Commissioner, 85 T.C. 527, 529 (1985). The Court's jurisdiction to review cases under I.R.C. §§ 6320(c) and 6330(d)(1) depends on the issuance of a valid notice of determination and a timely filed petition for review. Raymond v. Commissioner, 119 T.C. 191, 193 (2002); Lunsford v. Commissioner, 117 T.C. 159, 161 (2001).

6. A CDP Lien Notice must be sent to a taxpayer's last known address. I.R.C. § 6320(a)(2). A taxpayer's last known address is generally the address on the taxpayer's most recent income tax return. Treas. Reg. § 301.6212-2(a). The Commissioner also has a duty of reasonable diligence in ascertaining a taxpayer's last known address. Alta Sierra Vista, Inc. v. Commissioner, 62 T.C. 367, 374 (1974), aff'd 538 F.2d 334

(9th Cir. 1976).

7. In this case, petitioner had not filed returns for several years, including the taxable years at issue and petitioner's address in [REDACTED] California was reflected in respondent's computer systems as his last known address. However, beginning around late March or early [REDACTED] 2006, petitioner's case was assigned to a Revenue Officer who corresponded with petitioner using an address at [REDACTED]

8. Respondent, giving petitioner some benefit of the doubt, concedes for purposes of this case that the CDP Lien Notice dated [REDACTED] 2006, was not sent to petitioner at his last known address.

9. Respondent will withdraw the Federal tax lien upon the granting of this motion, but informs that Court that respondent intends to refile a Federal tax lien, reissue a CDP Lien Notice to petitioner at his current address of [REDACTED] [REDACTED]", and petitioner will have an opportunity for a CDP hearing if he timely requests one under section 6320.

10. Petitioner has no objection to the granting of this motion.

Docket No. [REDACTED]

WHEREFORE, respondent requests that this motion be granted.

[REDACTED]
Chief Counsel
Internal Revenue Service

Date: [REDACTED] 2008

By: [REDACTED]
[REDACTED]
Attorney
(Small Business/Self-Employed)
Tax Court Bar [REDACTED]
[REDACTED]
[REDACTED]

OF COUNSEL:
[REDACTED]
Division Counsel
(Small Business/Self-Employed)
[REDACTED]
Area Counsel
(Small Business/Self-Employed:Area 5)
[REDACTED]
Associate Area Counsel
(Small Business/Self-Employed)