

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Richard [REDACTED])	
)	
Petitioner,)	
)	
v.)	Docket No. [REDACTED]-12 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

The petition in this case was filed on [REDACTED], 2012. Petitioner seeks review of a purported notice of determination concerning collection action dated [REDACTED], 2012, allegedly issued with respect to his taxable years 2007 and 2008. No notice of determination under I.R.C. section 6320 or 6330 for 2007 and/or 2008 was attached to the petition. Rather, petitioner attached an IRS Form 668-W(c), Notice of Levy on Wages, Salary, and Other Income dated [REDACTED], 2012, issued with respect to his unpaid 2007 and 2008 income tax liabilities.

On [REDACTED], 2012, petitioner filed a Motion To Restrain Assessment or Collection and To Order Refund of Amount Collected. On [REDACTED], 2012, respondent filed an Objection to petitioner's motion to restrain.

On [REDACTED], 2012, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground that no notice of determination under I.R.C. section 6320 or 6330 or other notice of determination for 2007 and 2008 was issued to petitioner that would confer jurisdiction upon this Court. In support of his motion to dismiss, respondent states that, based upon a diligent search conducted of respondent's records, respondent has determined that no notice of determination under I.R.C. section 6320 or 6330 or other notice of determination for 2007 and 2008 was issued to petitioner that would confer jurisdiction upon this Court. On [REDACTED], 2012, petitioner filed an Objection to respondent's motion to dismiss. On [REDACTED], 2012, respondent filed a Response to petitioner's objection. Among other things, in his Response respondent now acknowledges that: (1) petitioner provided clear and concise notice to respondent of petitioner's change of address prior to and/or during respondent's examination of petitioner's 2007 and 2008 returns, (2) respondent, however, failed to update his records regarding petitioner's last known address when respondent issued the Final Notice of Intent To Levy and Notice of Your Right to a Hearing to collect the unpaid 2007 and 2008 tax liabilities (CDP levy notice) on [REDACTED], 2011; and (3) petitioner did not receive the [REDACTED], 2011, CDP levy notice, and did not request an administrative collection due process hearing with respondent as to the proposed levy action for 2007 and 2008. Respondent further states that: (1) since the CDP levy notice was not sent to petitioner's last known address, respondent has initiated steps to (a) release the notice of levy for 2007 and 2008, (b) manually refund to petitioner any monies collected on account of

SERVED [REDACTED] 2012

that levy for 2007 and 2008, (c) rescind issuance of the [REDACTED], 2011, CDP levy notice to petitioner; and (d) change respondent's records reflecting petitioner's last known address, (2) respondent hopes to effectuate the aforementioned steps 1(a) through (c) within 30 days of the filing of respondent's Response, (3) there is currently a collection freeze placed on petitioner's 2007 and 2008 taxable year accounts; and (4) rescission of the [REDACTED], 2011, CDP levy notice will require respondent to issue to petitioner a new CDP levy notice for 2007 and 2008 if respondent desires to collect on the unpaid 2007 and 2008 income tax liabilities.

In a case seeking review of a determination under I.R.C. section 6320 or 6330, the Court's jurisdiction to review certain collection activity of the Internal Revenue Service depends on (1) the issuance of a valid notice of determination by an Internal Revenue Service Appeals Officer under I.R.C. section 6320 or 6330 and (2) the timely filing of petition generally within 30 days of that Appeals Office determination. *Smith v. Commissioner*, 124 T.C. 36, 38-39 (2005); *Offiler v. Commissioner*, 114 T.C. 492 (2000); I.R.C. sec. 6320(c) and 6330(d)(1); Rule 330(b), Tax Court Rules of Practice and Procedure.

I.R.C. section 6330(e) (1) provides in pertinent part:

Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.

The record in this case reflects that no notice of determination under I.R.C. section 6320 or 6330 for 2007 and 2008 was issued to petitioner that would confer jurisdiction upon this Court. This Court lacks jurisdiction here in this case where no valid final notice of intent to levy (CDP levy notice) for 2007 and 2008 was issued to petitioner at his last known address. See *Buffano v. Commissioner*, T.C. Memo. 2007-32.

The foregoing and the premises considered, it is

ORDERED that petitioner's Motion To Restrain Assessment or Collection and To Order Refund of Amount Collected, filed [REDACTED], 2012, is denied. It is further

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction, filed [REDACTED], 2012, is granted and this case is dismissed for lack of jurisdiction.

(Signed) [REDACTED]
Chief Judge

ENTERED: [REDACTED] 2012