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Paul Kenneth Cromar,
Petitioner

v.

Commissioner of Internal Revenue
Respondent

Electronically Filed
Docket No. 15701-21

Motion to Dismiss for Lack of Jurisdiction



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UNITED STATES TAX COURT

PAUL KENNETH CROMAR,)	
)	
Petitioner,)	
)	
v.)	Docket No. 15701-21
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	Filed Electronically
)	
Respondent.)	

MOTION TO DISMISS FOR LACK OF JURISDICTION

RESPONDENT MOVES that:

(1) this case be dismissed for lack of jurisdiction upon the ground that no statutory notice of deficiency, as authorized by I.R.C. § 6212 and required by I.R.C. § 6213(a) to form the basis for a petition to this Court, has been sent to petitioner with respect to taxable years 1991, 1992, 1993, 1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020, nor has respondent made any other determination with respect to petitioner's taxable years 1991, 1992, 1993, 1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020 that would confer jurisdiction on this Court.

(2) this case be dismissed for lack of jurisdiction upon the ground that the petition also was not filed within the time prescribed by I.R.C. § 6213(a) or § 7502

to confer jurisdiction on this Court with respect to petitioner's taxable years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, or 2005, and respondent made no other determination sufficient to confer jurisdiction on this Court with respect to those taxable years.

(3) this Court state in its Order of Dismissal that the basis for the dismissal is that "no notice of deficiency or notice of determination was issued to petitioner within 150 days or 30 days, respectively, of the filing of the petition"; and,

(4) this Court warn petitioner in its Order of Dismissal that it may impose a penalty under I.R.C. § 6673 if petitioner continues to file similar petitions.

IN SUPPORT THEREOF, Respondent respectfully states:

1. The petition was filed with the Tax Court on May 4, 2021, alleging only that a notice was not received by petitioner for taxable years 1991 through 2020. No documents were attached to the copy of the petition served on respondent.

2. The copy of the petition served upon respondent bears a notation that the date of the U.S. Postmark stamped on the cover in which the petition was mailed to the Tax Court is April 28, 2021.

3. Respondent has diligently searched his records and contacted I.R.S. personnel in an attempt to determine whether a notice of deficiency was issued for petitioner's taxable years 1991, 1992, 1993, 1994, 1995, 1998, 1999, 2006, 2007,

2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020.

I. Taxable Years 1991, 1992, 1993, 1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020

4. Based on respondent's diligent search, and based on a review of respondent's records kept in the ordinary course of business when respondent issues and mails a notice of deficiency to a specific taxpayer, there is no record, information, or other evidence indicating that a notice of deficiency authorized by I.R.C. § 6212 was mailed to petitioner with respect to taxable years 1991, 1992, 1993, 1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020.

5. Accordingly, respondent has determined, based upon the foregoing, that no notice of deficiency sufficient to confer jurisdiction on the Court pursuant to I.R.C. §§ 6212 and 6213(a) has been sent to petitioner with respect to taxable years 1991, 1992, 1993, 1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020.

6. Respondent has further determined based upon the above-described diligent search that no other determination has been made by respondent that would confer jurisdiction upon this Court for taxable years 1991, 1992, 1993,

1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020.

7. Additionally, respondent has not made any other determinations with respect to petitioner's taxable years 1991, 1992, 1993, 1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020 that would confer jurisdiction on this Court.

8. Petitioner has neither produced, nor otherwise demonstrated, that a notice of deficiency or other determination sufficient to confer jurisdiction on this Court was mailed to petitioner as required by I.R.C. § 6213(a) and Tax Court Rule 34(b), or other applicable provisions of the Internal Revenue Code or Rules of this Court, for taxable years 1991, 1992, 1993, 1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020.

9. Therefore, respondent moves that this case be dismissed for lack of jurisdiction as to taxable years 1991, 1992, 1993, 1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020 upon the ground that no statutory notice of deficiency, as authorized by I.R.C. § 6212 and required by I.R.C. § 6213(a) to form the basis for a petition to this Court, has been sent to petitioner with respect to taxable years 1991, 1992, 1993, 1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014,

2015, 2016, 2017, 2018, 2019, or 2020, nor has respondent made any other determination with respect to petitioner's taxable years 1991, 1992, 1993, 1994, 1995, 1998, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020 that would confer jurisdiction on this Court.

II. Taxable Years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, and 2005

10. Respondent issued notices of deficiency to petitioner for taxable years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, and 2005. Upon a diligent inquiry, respondent determined that the age of the notices of deficiency (all issued more than 14 years ago) make them unobtainable. Therefore, respondent cannot provide a copy of the notices of deficiency.

11. However, evidence from respondent's Integrated Data Retrieval System (IDRS) shows that respondent issued notices of deficiency to petitioner for taxable years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, and 2005, but the petition was not timely filed in response.

12. Attached as Exhibit A is a copy of Transcript Delivery System (EUP) literal transcripts for the taxable years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, and 2005.

13. Attached as Exhibit B is a copy of a IMFOLT account transcripts for taxable years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, and 2005. The

IMFOLT transcripts provide a more detailed record of respondent's actions for petitioner's taxable years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, and 2005.

14. The IMFOLT transcripts for each of the taxable years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, and 2005 contain a TC 420 code. The TC 420 code shows that respondent referred petitioner's returns for taxable years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, and 2005 to his Examination function.

15. The IMFOLT transcripts for each of the taxable years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, and 2005 also contain a TC 300 code with an associated disposal code 10 ("DISPOSAL-CD:10"). These codes show that respondent assessed a deficiency for each of taxable years 1996, 1997, 1999, 2000, 2001, 2002, 2003, 2004, and 2005 after petitioner failed to file a petition in response to a notice of deficiency. See I.R.M. 4.4.12.5.22.5(1) (June 1, 2002)(directing employees to use disposal code 10 for a defaulted notice of deficiency).

a. Defaulted Notice of Deficiency and Notice of Determination for Taxable Years 1996 and 1997

16. The IMFOLT transcripts for taxable years 1996 and 1997 contain a TC 420 code dated November 27, 2002. The TC 420 code shows that respondent

referred petitioner's return(s) for taxable years 1996 and 1997 to his Examination function on or about November 27, 2002.

17. The IMFOLT transcripts for taxable years 1996 and 1997 also contain a TC 300 code with an associated disposal code 10 ("DISPOSAL-CD:10"). The date of these codes is December 22, 2003 ("12222003"). These codes show that respondent assessed deficiencies in the amounts of \$6,173.00 and \$7,151.00 for taxable years 1996 and 1997, respectively, after petitioner failed to file a petition in response to a notice of deficiency. See I.R.M. 4.4.12.5.22.5(1) (June 1, 2002)(directing employees to use disposal code 10 for a defaulted notice of deficiency).

18. For notices of deficiency issued to taxpayers within the United States, if the taxpayer does not file a petition with the Tax Court within 105 days from the issuance of the notice of deficiency, the Service may immediately assess the deficiency. I.R.M. 4.8.9.26 (2) (July 9, 2013).

19. Counting backwards 105 days from the date of the default assessment, December 22, 2003, respondent likely issued the notice of deficiency to petitioner on or about September 8, 2003.

20. Petitioner filed the petition 6,337 days after September 8, 2003. The 90-day period for timely filing a petition with this Court from the notice of

deficiency expired on or about December 8, 2003, which date was not a Saturday, a Sunday, or a legal holiday in the District of Columbia.

21. The IMFOLT transcripts for taxable years 1996 and 1997 also contain a TC 971 code with an associated action code 275 (“ACT-CD: 275”) dated October 19, 2004. The TC 971 code with an associated action code 275 shows that petitioner submitted a timely request for a Collection Due Process hearing for taxable years 1996 and 1997 on or about October 19, 2004.

22. The IMFOLT transcripts for taxable years 1996 and 1997 also contain a TC 971 code with an associated action code 277 (“ACT-CD: 277”). The date of these codes is March 10, 2005 (“03102005”). These codes indicate that Appeals completed their investigation and issued notice of determination for taxable years 1996 and 1997 on or about March 10, 2005.

23. For notices of determination issued to taxpayers within the United States, the taxpayer may timely file a petition with the Tax Court within 30 days of the determination. If the taxpayer files a petition more than 30 days after the notice of determination was issued, the Tax Court will not have jurisdiction to consider the petition. I.R.C. § 6330(d)(1).

24. Petitioner filed the petition 5,893 days after March 10, 2005. The 30-

day period for timely filing a petition with this Court from the notice of determination expired on or about April 11, 2005, which date was not a Saturday, a Sunday, or a legal holiday in the District of Columbia.

25. Respondent moves that this case be dismissed for lack of jurisdiction as to taxable years 1996 and 1997 upon the ground that the petition was not filed within the times prescribed by I.R.C. § 6213(a), §6330(d)(1), or § 7502.

26. Respondent has further determined based upon the above-described diligent search that no other determination has been made by respondent that would confer jurisdiction upon this Court for taxable years 1996 or 1997.

b. Defaulted Notice of Deficiency for Taxable Years 1999, 2000, 2001, 2002, 2003, 2004, and 2005

27. The IMFOLT transcripts for taxable years 1999, 2000, 2001, and 2004 each contain a TC 420 code dated November 23, 2005. The TC 420 code shows that respondent referred petitioner's returns for taxable years 1999, 2000, 2001, and 2004 to his Examination function on or about November 23, 2005.

28. The IMFOLT transcripts for taxable years 2002, and 2003 each contain a TC 420 code dated October 7, 2004. The TC 420 code shows that respondent referred petitioner's returns for taxable years 2002 and 2003 to his Examination function on or about October 7, 2004.

29. The IMFOLT transcript for taxable year 2005 contains a TC 420 code dated October 5, 2006. The TC 420 code shows that respondent referred petitioner's return for taxable year 2005 to his Examination function on or about October 5, 2006.

30. Ultimately, the IMFOLT transcripts for all seven of these taxable years 1999, 2000, 2001, 2002, 2003, 2004, and 2005 also contain a TC 300 code with an associated disposal code 10 ("DISPOSAL-CD:10"). The date of these codes is November 26, 2007 ("11262007") for all seven years. These codes show that respondent assessed deficiencies in the amounts of \$53,674.00, \$69,002.00, \$50,245.00, \$35,038.00, \$35,324.00, \$70,825.00, and \$54,912.00 for taxable years 1999, 2000, 2001, 2002, 2003, 2004, and 2005, respectively, after petitioner failed to file a petition in response to a notice of deficiency. See I.R.M. 4.4.12.5.22.5(1) (June 1, 2002)(directing employees to use disposal code 10 for a defaulted notice of deficiency).

31. For notices of deficiency issued to taxpayers within the United States, if the taxpayer does not file a petition with the Tax Court within 105 days from the issuance of the notice of deficiency, the Service may immediately assess the deficiency. I.R.M. 4.8.9.26 (2) (July 9, 2013).

32. Counting backwards 105 days from the date of the default assessment,

November 26, 2007, respondent likely issued the notice of deficiency to petitioner on or about August 14, 2007.

33. Petitioner filed the petition 5,006 days after August 14, 2007. The 90-day period for timely filing a petition with this Court from the notice of deficiency expired on or about November 12, 2007, which date was not a Saturday, a Sunday, or a legal holiday in the District of Columbia.

34. Respondent moves that this case be dismissed for lack of jurisdiction as to taxable years 1999, 2000, 2001, 2002, 2003, 2004, and 2005 upon the ground that the petition was not filed within the time prescribed by I.R.C. § 6213(a) or § 7502.

35. Respondent has further determined based upon the above-described diligent search that no other determination has been made by respondent that would confer jurisdiction upon this Court for taxable years 1999, 2000, 2001, 2002, 2003, 2004, or 2005.

Certification Under Section 7345

36. As reflected on the transcripts attached as Exhibit A and B, on or about July 9, 2018, respondent certified petitioner as an individual owing seriously delinquent tax debt for taxable years 1999, 2000, 2001, 2002, 2003, 2004, and 2005 pursuant to section 7345 of the Internal Revenue Code.

37. This petition fails to challenge the certification under section 7345.

Petitioner has not attached a Notice CP508C to the petition and does not make any statements in the petition regarding disagreement with the certification or failure to reverse the certification or provide facts supporting such disagreement, contrary to the requirements of Tax Court Rule 351(b).

38. Although the Court would currently have jurisdiction over petitioner's certification as an individual owing a seriously delinquent tax debt pursuant to section 7345(e), petitioner has not sought judicial review to determine whether the certification was erroneous or whether the Service has failed to reverse a certification. Petitioner's only allegations concern whether he received a notice of deficiency or a notice of determination concerning collection action. Because of the failure to challenge certification under section 7345(e), there is no basis for jurisdiction under section 7345(e) for taxable years 1999, 2000, 2001, 2002, 2003, 2004, or 2005 in this case and this motion should be granted.¹

¹ The general statute of limitations for claims filed against the United States applies to actions under section 7345(e). If petitioner wishes to pursue an action under section 7345(e) with respect to his certification as an individual owing a seriously delinquent tax debt, petitioner has six years from the date of his certification under section 7345. See 28 U.S.C. § 2401(a).

Conclusion

39. Respondent has received numerous frivolous petitions that are nearly identical to the one filed in this case. Petitioner does not raise any good-faith argument for Tax Court relief in his petition.


40. Respondent reserves the right to request the Court impose a monetary penalty under I.R.C. § 6673 in the future if petitioner files similar petitions.

41. Respondent attempted to contact petitioner to determine if petitioner objects to the granting of this motion but was not able to reach him. As a result, respondent does not know if petitioner objects to the granting of this motion.

WHEREFORE, it is prayed that this motion be granted.

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Date: 09/07/2021

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