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Vantha Kem,

Petitioner

v.

Commissioner of Internal Revenue

Respondent

Electronically Filed
Docket No. 22944-22
Document No. 7

Motion to Dismiss for Lack of Jurisdiction

SERVED 12/06/22

UNITED STATES TAX COURT

VANTHA KEM,)	
)	
Petitioner,)	
)	
v.)	Docket No. 22944-22
)	
COMMISSIONER OF INTERNAL REVENUE,)	Filed Electronically
)	
Respondent.)	

MOTION TO DISMISS FOR LACK OF JURISDICTION

RESPONDENT MOVES that 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 year 2021, nor has respondent made any other determination with respect to petitioner’s taxable year 2021 that would confer jurisdiction on this Court.

IN SUPPORT THEREOF, respondent respectfully states:

1. Petitioner has filed a petition in response to receiving Letter 96C from respondent which “determined no action is necessary” regarding petitioner’s 2021 account. This form is not a notice of deficiency and is not otherwise a statutory notice conferring jurisdiction upon this Court.

2. Petitioner claims that Letter 96C qualifies as a notice of deficiency because it determined a deficiency by denying a refundable credit. Petitioner supports this claim by citing Dees v. Commissioner, 148 TC 1 (2017). In Dees, a notice of deficiency was issued that stated, “We determined that there is a deficiency in your income tax which is listed above.” Dees at *2. Above that statement appeared “Deficiency: \$.00.” Id. The notice also inconsistently identified a tax increase on another page. The Court found the notice of deficiency to be ambiguous but ultimately valid.

Here, unlike Dees, the petitioner did not receive a notice a deficiency. Letter 96C, attached to the petition, indicates that “no action is necessary” on petitioner’s account. Nowhere does it state that there is a deficiency or that a deficiency was determined. As no deficiency was determined, this letter cannot be construed as a notice of deficiency.

3. In addition, petitioner argues that Letter 96C qualifies as a notice of deficiency because it is a reply to petitioner’s response to Notice CP 13 and that reply triggers deficiency procedures under I.R.C. § 6213. While I.R.C. § 6213(b) provides an abatement process of *assessments* that are the result of clerical or mathematical errors, that is not what happened here. Petitioner has not been assessed additional tax, she has not received a proposed assessment, and she has

not been notified that there is a change in her tax owed in excess of what was shown on her return. Thus, petitioner has not received a notice of deficiency and the deficiency procedures were not triggered by petitioner's receipt of Letter 96C.

4. Respondent has searched his records and found that no notice of deficiency has been issued to petitioner for taxable year 2021, the year identified on the petition.

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 the taxable year 2021 prior to the petition in this case.

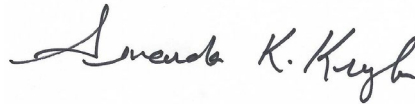
6. Respondent has further determined, based upon the above-described diligent search, that no other determination has been made by respondent that would confer jurisdiction upon this Court.

7. 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 prior to the petition date 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.

8. Petitioner objects to the granting of this motion.

WHEREFORE, respondent requests that this motion be granted.

DRITA TONUZI
Deputy Chief Counsel (Operations)
Internal Revenue Service



Date: December 6, 2022

By: _____

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