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Vantha Kem,

Petitioner

v.

Commissioner of Internal Revenue

Respondent

Electronically Filed
Docket No. 22944-22
Document No. 13

Reply to Response to Objection to Motion to Dismiss for Lack of Jurisdiction

SERVED 02/22/23

UNITED STATES TAX COURT

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

**PETITIONER’S REPLY TO RESPONDENT’S RESPONSE TO PETITIONER’S
OBJECTION TO MOTION TO DISMISS FOR LACK OF JURISDICTION**

PETITIONER replies to “Respondent’s Response to Petitioner’s Objection to Motion to Dismiss for Lack of Jurisdiction” as follows¹:

1. Leaving aside the question of whether the Petitioner’s pleadings should be deemed admitted for the limited purpose of Respondent’s Motion to Dismiss, this Court should deny Respondent’s Motion because Respondent is factually incorrect about the date of Respondent’s CP13 math error assessment notice, because Respondent is legally incorrect about the filing date of Petitioner’s request for abatement of that assessment, and because Respondent does not otherwise address Petitioner’s January 9, 2023 argument that Petitioner’s timely protest of the CP13 math error assessment notice required Respondent to issue a Notice of Deficiency and that Respondent’s July 29, 2022 LTR 96C constitutes a Notice of Deficiency.

¹ For purposes of simplification, the Commissioner of Revenue, Secretary of the Treasury, and Internal Revenue Service, are all referred to as “Respondent.”

2. Petitioner has been unable to retrieve the Notice CP13 for tax year 2021 that she received. Because Respondent stated they could not obtain a copy of the CP13 that they mailed to the petitioner, Petitioner's counsel contacted the Practitioner Priority Service (hereinafter "PPS") to establish what the date on the Notice CP13 was. On February 6, 2023, Petitioner's counsel spoke on the phone with PPS agent Chris Olson (ID #1001181424) who said that the date for the Notice CP13 was February 28, 2022. This date matches with the date of the Notice CP13 per Petitioner's 2021 account transcript. A review of three other taxpayers' account transcripts (three different taxpayers whom Petitioner's counsel represents in IRS proceedings) shows that the Notice CP13 date on those taxpayers' account transcripts matches exactly with the date on their actual Notices CP13.
3. Previously, out of an abundance of caution, because Petitioner's counsel did not have the actual Notice CP13, Petitioner's counsel used the February 14, 2022 date, from the Where's My Refund tool, as the presumed date of the notice. Therefore, Petitioner's counsel mailed the response to the Notice CP13 on the 60th day after the Where's My Refund February 14, 2022 date: April 15, 2022.
4. Per IRC 6213(b)(2)(A), "a taxpayer may file with the Secretary within 60 days after notice is sent...a request for an abatement of any assessment specified in such notice." The language of "file...within 60 days" has the same meaning as "file" does under IRC 6213(a), where filing a petition, within 90 days of mailing of a Statutory Notice of Deficiency, is timely if the petition was mailed even on the 90th day after mailing of the notice.

5. Under IRC 7502 and accompanying regulations at 26 CFR Section 301.7502-1, “a document...is deemed to be filed...on the date of the postmark stamped on the envelope or other appropriate wrapper.” 26 CFR Sec. 301.7502-1 states that “if a document...is sent by U.S. registered mail, the date of registration of the document...is treated as the postmark date” and further, “the date of the U.S. postmark on the receipt is treated as the postmark date of the document [and] [a]ccordingly, the risk that the document...will not be postmarked on the day that it is deposited in the mail may be eliminated by the use of registered or certified mail.” The relevant regulations specifically state that a certified mail receipt date trumps a postmark date as the date that the document is deemed filed.
6. The Internal Revenue Manual, at I.R.M 21.5.4.2.5 (10-01-2021), under “General Math Error Procedures Overview,” states explicitly that “IRC 6213(b)(2)(A) allows the taxpayer 60 days from the date of the math error notice to request abatement [and]...if the requested is submitted via U.S. mail, use the postmark date to determine if the response was timely.”
7. This rule that the date of mailing – especially if supported by a certified mail receipt – qualifies as the date of filing, is memorialized in Notice CC-2001-019, a 2001 Chief Counsel Memo that established that the aforementioned CFR Sec. 301.7502-1 should be interpreted that “timely mailing” is “timely filing.” Notice CC-2001-019 also made clear that “Section 7502(a) generally provides that a...statement, or other document postmarked on or before the due date of the document will be treated as filed on the postmark date if the document is received after the due date.”

8. Pursuant to Respondent's own rules and standards, even if the Court were to assume that Respondent was correct that February 14, 2022 was the mailing date of the Notice CP13, Petitioner's response was timely filed. Petitioner's response was mailed on the 60th day, April 15, 2022, after February 14, 2022. The proof of timely mailing can be found in the enclosed certified mail U.S. Postal Service (hereinafter "USPS") E-Receipt, dated April 15, 2022, and the USPS tracking history which shows April 15, 2022 as the date the USPS came into possession of the item. The certified mail tracking number is shown on the cover letter that was sent with Petitioner's response to the Notice CP13 and the enclosed USPS tracking history is associated with that number. As such, given the aforementioned statute, regulations, Internal Revenue Manual, and Chief Counsel Memo, even if Respondent were correct that February 14, 2022 was the date on the Notice CP13, Petitioner's April 15, 2022 *mailed* response was timely even if it was *received* after April 15, 2022.
9. However, the fact of the matter is that, by all accounts (based on a further review of the Petitioner's 2021 account transcript and our February 6, 2023 phone call with PPS), it appears that the true date on the Notice CP13 in this case was February 28, 2022, not February 14, 2022.
10. Therefore, the Court should acknowledge February 28, 2022 as the date of Petitioner's Notice CP13. Petitioner's response was clearly mailed within 60 days of February 28, 2022. The response was mailed, and filed, on April 15, 2022, well within the time frame that Petitioner had to respond. Even if this Court were to accept Respondent's interpretation of the Code and Treasury regulations that the rule for math error abatement requests is that the abatement request must be **received** by the

Respondent within 60 days, Petitioner's response was timely. The USPS tracking history enclosed shows that Respondent received the abatement request on April 19, 2022, well before the 60th day after the February 28, 2022 Notice CP13 date.

11. If the Court has any uncertainty about the date of the Notice CP13 that Respondent mailed to Petitioner, or whether Petitioner's written disagreement with the Notice CP13 was filed within 60 days of the date the CP13 was mailed, then there is a dispute of material fact on these issues and Respondent's motion must be denied.
12. However, it should be noted that in the same February 6, 2023 PPS call where Petitioner's counsel established that February 28, 2022 was the date of the Notice CP13, the same PPS agent on that call agreed to adjust the account for Petitioner to release the \$1,400 recovery rebate credit (hereinafter "RRC") claim to Petitioner. The PPS agent informed Petitioner's counsel that the reason for the adjustment is because Respondent's records showed that the original \$2,800 Economic Impact Payment (hereinafter "EIP") check was actually returned to Respondent's offices as "undeliverable" thus confirming that no taxpayer ever successfully deposited the EIP. Therefore, Petitioner had a viable claim to the \$1,400 as an RRC on her 2021 Form 1040 individual income tax return.
13. Within days of Petitioner's counsel's call with PPS on February 6, 2023, Petitioner's 2021 IRS account transcript then showed that the \$1,400 would be deposited into Petitioner's account on February 15, 2023. On February 13, 2023, Petitioner informed Petitioner's counsel that she received the \$1,400 RRC, with interest of \$62.57.
14. Petitioner finally obtained the \$1,462.57 refund for 2021 after nearly a year of repeated efforts to demonstrate to Respondent that no taxpayer ever received any

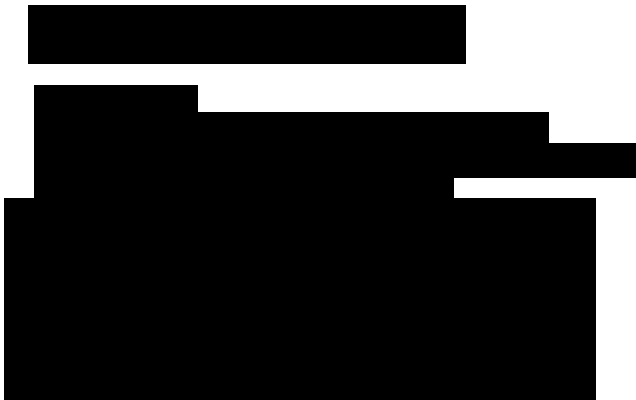
portion of the 2021 EIP. Those efforts included attempts to return the check and initiate a refund trace, the 2021 tax return filing claiming the \$1,400 RRC, the April 15, 2022 math error response, an unsuccessful attempt to call PPS on April 26, 2022, the Tax Court petition filed on October 27, 2022, and our January 9, 2023 Response to the Motion to Dismiss.

SUBMITTED respectfully,

Date: 2/22/23

By: 
Counsel for Petitioner

Omeed Firouzi
Tax Court Bar No. FO0026
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Delivered

Delivered, Individual Picked Up at Postal Facility

FRESNO, CA 93888

April 19, 2022, 4:06 am

Arrived at Post Office

FRESNO, CA 93706

April 18, 2022, 10:29 am

Arrived at USPS Regional Destination Facility

FRESNO CA DISTRIBUTION CENTER

April 18, 2022, 10:28 am

In Transit to Next Facility

April 17, 2022

Arrived at USPS Regional Origin Facility

PHILADELPHIA PA DISTRIBUTION CENTER

April 16, 2022, 10:48 pm

USPS expects item for mailing (SSK)

PHILADELPHIA, PA 19104

April 15, 2022

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FAQs



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 02-22-2023
Response Date: 02-22-2023
Tracking Number: [REDACTED]

FORM NUMBER: 1040
TAX PERIOD: Dec. 31, 2021

TAXPAYER IDENTIFICATION NUMBER: [REDACTED]

VANT KE
6757 L

<<<<POWER OF ATTORNEY/TAX INFORMATION AUTHORIZATION (POA/TIA) ON FILE>>>>

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	0.00	
ACCRUED INTEREST:	0.00	AS OF: Mar. 06, 2023
ACCRUED PENALTY:	0.00	AS OF: Mar. 06, 2023
ACCOUNT BALANCE PLUS ACCRUALS (this is not a payoff amount):	0.00	

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

EXEMPTIONS:	01
FILING STATUS:	Single
ADJUSTED GROSS INCOME:	0.00
TAXABLE INCOME:	0.00
TAX PER RETURN:	0.00
SE TAXABLE INCOME TAXPAYER:	0.00
SE TAXABLE INCOME SPOUSE:	0.00
TOTAL SELF EMPLOYMENT TAX:	0.00

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Apr. 15, 2022
PROCESSING DATE Feb. 28, 2022

[Redacted]

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	20220605	02-28-2022	\$0.00
n/a	14211-424-14370-2			
290	Additional tax assessed 00-00-0000	20211005	03-29-2021	\$0.00
n/a	16254-999-05011-1			
290	Additional tax assessed 00-00-0000	20211805	05-24-2021	\$0.00
n/a	16254-999-05011-1			
971	Notice issued CP 0013		02-28-2022	\$0.00
960	Appointed representative		05-25-2022	\$0.00
766	Credit to your account		04-15-2022	-\$1,400.00
290	Additional tax assessed 00-00-0000	20230605	02-27-2023	\$0.00
n/a	89254-439-05804-3			
971	Notice issued CP 0021		02-27-2023	\$0.00
846	Refund issued		02-15-2023	\$1,462.57
776	Interest credited to your account		02-27-2023	-\$62.57

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