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Vantha Kem,

Petitioner

v.

Commissioner of Internal Revenue

Respondent

Electronically Filed  
Docket No. 22944-22  
Document No. 12

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

**SERVED 02/06/23**

**UNITED STATES TAX COURT**

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

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

PURSUANT to this Court’s order dated January 17, 2023, respondent responds to “Petitioner’s Objection to Respondent’s Motion to Dismiss for Lack of Jurisdiction” as follows:

1. The allegations of fact made in the petition are not deemed to be admitted because the time for filing an answer has not expired. T.C. Rule 25(c) states in part, “Where a motion is made concerning jurisdiction or the sufficiency of a pleading, the time for filing a response to that pleading shall begin to run from the date of service of the order disposing of the motion by the Court, unless the Court shall direct otherwise.” Respondent filed a Motion to Dismiss for Lack of Jurisdiction on December 6, 2022, prior to the expiration of time to respond to the petition. This Court has not directed respondent to file a response to the pleading prior to the issuance of an order disposing of respondent’s pending motion

concerning jurisdiction. Therefore, the time for filing a response to the petition has not expired and allegations in the petition are not deemed admitted.

2. Petitioner has not established that formal appeal rights were preserved.

(a). Petitioner's Exhibit D<sup>1</sup> is a redacted Notice CP13 that has a notice date of April 11, 2022. Because both the taxpayer's name and the adjusted gross income amounts are redacted, respondent is unable to determine if this notice was issued to petitioner. Respondent has found no record of issuing a Notice CP13 to petitioner on or about April 11, 2022. Respondent attempted to obtain a copy of the Notice CP13 issued to petitioner but, because it is a computer-generated notice and no file copy is kept, it is likely not available.

(b). IRC § 6213(b)(2) provides, in part, that "a taxpayer may file with the Secretary within 60 days after notice is sent" (emphasis added). Therefore, to preserve appeal rights, petitioner must have notified the IRS before the expiration of the sixtieth day.

Petitioner's Exhibit E is a letter to the IRS disputing the Notice CP13. This letter is dated April 15, 2022, and states it is responding to a Notice CP13 dated February 14, 2022, and that it is intended "to be within 60 days of 2/14/22."

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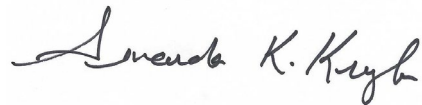
<sup>1</sup> Petitioner's exhibits refer to the exhibits included with "Petitioner's Objection to Respondent's Motion to Dismiss for Lack of Jurisdiction," filed January 9, 2023, at Document No. 9.

Petitioner has not provided a copy of the February notice but, if the Notice CP13 was dated February 14, 2022, the sixtieth day would have been April 15, 2022. Further, petitioner's letter demonstrates that petitioner understood April 15, 2022 to be the 60th day after the February Notice CP 13. As petitioner's request was mailed on April 15, 2022, it could not have been received by the IRS within 60 days and therefore would not be timely. Further, petitioner's Exhibit F provides that the IRS received petitioner's correspondence on April 19, 2022. Thus, petitioner did not notify the IRS within the statutory time and was not entitled to a notice of deficiency. Therefore, petitioner's Exhibit F, Letter 96C was an appropriate response.

3. Petitioner has an adequate remedy. As noted in petitioner's Exhibit D, Notice CP13, in cases where the notice recipient does not contact the IRS within the statutory 60 days, the taxpayer may still file a claim for refund to dispute changes made in the notice. Petitioner has three years from the date the return was filed to file a claim for refund. Petitioner electronically filed a 2021 income tax return on January 24, 2022; accordingly, petitioner has nearly two years to file an administrative claim for refund.

WHEREFORE, respondent requests that the motion to dismiss for lack of jurisdiction be granted.

DRITA TONUZI  
Deputy Chief Counsel (Operations)  
Internal Revenue Service



Date: 2/6/2023

By: \_\_\_\_\_

AMANDA K. KRUGLER  
Attorney (SB/SE)  
Tax Court Bar No. KA21073  
600 Arch Street  
Suite 03-L14-01  
Philadelphia, Pennsylvania 19106  
Telephone: (267) 941-6592  
Efax:(855) 606-5388  
amanda.k.krugler@irscounsel.treas.gov

OF COUNSEL:  
JOSEPH W. SPIRES  
Division Counsel  
(Small Business/Self-Employed)  
NANCY B. ROMANO  
Area Counsel  
(Small Business/Self-Employed: Area 2)  
DAVID A. INDEK  
Associate Area Counsel (Philadelphia)  
(Small Business/Self-Employed)