IN CASE YOU MISSED IT – March 2023

***By Ellen S. Brody, JD, CPA, Esq.*[1]**

Almost every day, federal and state courts issue opinions that affect taxpayers. The IRS and state taxing authorities also publish guidance on myriad topics.

Each month, this column will review a selection of recent court cases or guidance that tax professionals should know about when advising their clients and preparing tax returns.

For more extensive detail on any of these items, please feel free to reach out to the author.

Amanasu Environment Corporation v. Commissioner – Late filing with Tax Court not always a death knoll

Deadlines play a vital role in dealing with the IRS. The Code establishes rigid procedures that the IRS and the taxpayer must follow in making an assessment, disputing it, and collecting on it. Missing a deadline can result in a costly mistake.

This case started with the IRS issuing a Notice of Determination Concerning Collection Actions, Letter 3193 (hereinafter, "Notice of Determination") on December 13, 2019. The Notice of Determination represents a final determination by the IRS following a Collection Due Process (CDP) hearing. The IRS is required by Code Sec. 6320 and 6330 to send a Notice of Determination before it can begin levying a taxpayer's property. After receiving the Notice of Determination, the taxpayer has only 30 days from the date on the letter to petition the Tax Court if they wish to do so. Here, the Notice of Determination was mailed on December 13, 2019, so the statutory deadline for filing a Tax Court petition was January 13, 2020.

The taxpayer in the case was based in Canada. This did not change the 30-day statutory deadline that, unlike a Notice of Deficiency, applies regardless of whether the taxpayer has a U.S. or international address. The Notice of Determination was mailed to "4503 Bellevue Drive, *Vanclover* BC V6R1E4, Canada." The obvious problem was that the taxpayer's address was in Vancouver, not Vanclover. While this was clearly a typographical error, it was one that worked heavily in the

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taxpayer's favor in this case. The letter eventually arrived at the taxpayer's address despite the error in the address, but the record reflected that delivery was only first attempted on January 8, and was not successfully delivered until January 18. The record did not reveal why the attempted delivery on January 8 had failed, but the Court noted that there was no evidence submitted that the taxpayer had been left with instructions on how to retrieve the letter directly from the carrier and thus was not at fault for not collecting it sooner than the redelivery date. Regardless, if this initial delivery attempt had been successful, the taxpayer would have had only five days from receipt to file a petition with the Tax Court. Because the initial delivery was not successful, however, the taxpayer actually received the Notice of Determination five days *after* the date when they would have been required to file the petition.

The fact that the taxpayer never had the chance to file a petition before the deadline did not stop the IRS from arguing that the deadline still applied. The IRS filed a motion for summary judgment, arguing that the deadline had passed before the taxpayer filed its petition.

The taxpayer raised two main arguments in opposition to the motion. First, they argued that the Notice of Determination from the IRS was invalid because it had not been sent to the taxpayer's last known address. While Code Sec. 6330 imposes a deadline on taxpayers and establishes Tax Court jurisdiction, the section is also a procedural limitation on the government's ability to levy a taxpayer's property. Code Sec. 6330 protects the taxpayers by ensuring they are given notice and an opportunity to be heard before the government can seize their property.

The IRS must comply with specific timing, delivery, and content requirements of Code Sec. 6330. With respect to delivery, the IRS is required to give the notice in person, leave it at the dwelling or usual place of business of that person, or send it by certified or registered mail (with return receipt requested) to the person's *last known address*. Code Sec. 6330(a)(2). A taxpayer's last known address is the address on the taxpayer's most recently filed tax return (unless the Service has been specifically notified of a different address). [Treas. Reg. 301.6212-2(a)](). In this case, the Notice of Determination was sent to a *Vanclover* address when a *Vancouver* address was the address that was included on the taxpayer's most recently filed tax return. As a result, the taxpayer argued that the Notice was not sent to their last known address, thus rendering it invalid.

The Court agreed that there was a genuine issue of material fact on the validity of the Notice based on the issue with the address. The IRS cited several other cases where a typo in the address had been excused. The Court distinguished those cases from the one before it as the cases cited by the IRS had evidence introduced that the typo had not caused any significantly delayed delivery. There was no such evidence presented in this case.

The IRS argued that the Notice could be valid despite the typo because the taxpayer had eventually received it at the intended address. The Court acknowledged case law holding that a Notice sent to the wrong address could be valid if it was "actually received" by the taxpayer with enough time to still file a petition before the deadline. Here, the Notice was received after the deadline, so the requirement that the taxpayer have enough time to file was not satisfied. Furthermore, although the first attempted delivery was made before the deadline on January 8, this was merely five days before the statutory deadline to file a petition. Essentially, the Court did not think that actual receipt could conclusively cure the address error in this case because there was not sufficient evidence that the taxpayer could have had enough time to file the petition before the deadline. Both of the IRS's arguments on the matter of the validity of the Notice failed to satisfy the heightened burden of proof for summary judgment.

Second, the IRS argued that the taxpayer had not raised the argument of equitable tolling in its petition, therefore the Court could not consider whether it applied. Equitable tolling is a legal doctrine that can excuse a party's failure to satisfy a statute of limitations or deadline when there are equitable reasons to do so. Here, the taxpayer argued in an amended petition that the 30-day deadline should be equitably tolled because it would be inequitable to maintain it after the IRS had sent the Notice to the wrong address. Although this argument was left out of the initial petition, the Court granted the taxpayer leave to amend the petition and include the equitable tolling argument. The IRS's argument therefore was not upheld.

Although there was no direct proof that the typo itself was the cause of the delay, the taxpayer did not receive the Notice until after the statutory deadline for filing the petition. The IRS still tried to argue that the deadline should apply to preclude the taxpayer from filing a petition. The Court allowed the taxpayer the opportunity to fight this injustice.

Takeaway: Although taxpayers and their advisors should always try to meet all deadlines in disputes with the IRS, mail delays are increasingly a concern, and a taxpayer may be put into a situation where they have very little, if any, time to respond. Advisors should remember the strict procedural requirements of the statute and that doctrines including equitable tolling, if needed, might be available as a last resort to assist their clients.

IR-2023-23 – IRS Guidance on Special Tax Status of State Payments Made in 2022

State budgets have been affected by the COVID pandemic in myriad ways. In the early days of the pandemic, many worried that states would suffer financially as taxpayers moved away or stopped going out. Later on, it became clear that budgets would not be as drastically affected as expected, in part because of federal stimulus payments and in part because of states' diverse tax bases. In 2022, 21 states, including New York, were in a strong enough fiscal position to distribute "special payments" to state residents.

Until recently, the federal tax status of these payments was not clear. Payments made by a state to a taxpayer are generally included in the taxpayer's income unless an exception applies. There are exceptions for payments made by a state for the general welfare or as disaster relief, but the determination of whether one of these exceptions applies is complicated. Tax preparers were worried that their positions could be challenged by the IRS.

The IRS recently assuaged these concerns by issuing guidance on the federal tax status of the payments. Georgia, Massachusetts, South Carolina, and Virginia made payments in 2022 that are to be treated as a refund of state taxes paid. Both New York and Illinois made multiple types of payments, one of which will also be treated as a refund of state taxes paid. A refund of state taxes is not included in a taxpayer's income unless the taxpayer previously received a tax benefit based on the state taxes that are being refunded. Accordingly, taxpayers taking the standard deduction or limited by the $10,000 SALT deduction limit will not be taxed on payments received from this handful of states.

Special payments made by the other 15 states in 2022 (and certain of the payments made by New York and Illinois) should be treated as general welfare and disaster payments and therefore excluded from income.

The IRS has determined not to challenge treatments based on this guidance.

Ellen S. Brody, JD, CPA, Esq., is a partner at Roberts & Holland LLP. Ms. Brody can be reached at (212) 903-8712 or ebrody@rhtax.com.