



Tax Court Maintains that Taxpayers' Alter Egos Lack CDP Rights

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On May 29, 2020, the Tax Court granted the Internal Revenue Service's (IRS) Motion to Dismiss for Lack of Jurisdiction, clarifying that jurisdiction exists only for those who have Collections Due Process (CDP) rights; a nominee, alter ego, or other person holding taxpayer's property is not entitled to their own CDP rights.¹

It is important to remember, parties lacking CDP rights are entitled to other forms of review, including: (1) reconsideration by the IRS office responsible for collecting the tax; (2) National Taxpayer Advocate assistance; (3) or a Collection Appeals Program (CAP), which is an administrative hearing before the Appeals Office. We urge you to consult with a legal professional to determine which path is best for you.

Facts

In November of 2019 the IRS sent various communications to River X, Inc., and River X Transport, Inc.

(collectively, "the companies"), as nominee or alter ego of Albert B. Xavier.² The communications included a Notice of Federal Tax Lien (NFTL) for 2015 income taxes and trust fund penalties for tax periods 2005, 2007, 2008, 2009, and 2013 and a Notice of Levy on Wages, Salary, and Other Income for those same tax periods.³ Significantly, there were no notices of deficiency or determination issued by the IRS attached to the petition of River X.

On January 2, 2020, seeking to prevent collection activity, River X, Inc. (Petitioner), filed a Motion To Restrain Assessment or Collection or To Order Refund of Amount Collected with the Tax Court.

On February 11, 2020, the IRS subsequently filed a Motion To Dismiss for Lack of Jurisdiction, maintaining that the IRS had not made a determination regarding River X that would grant Tax Court jurisdiction.⁴

Petitioner timely filed an Objection To Motion To Dismiss for Lack of Jurisdiction, disputing the jurisdictional issues. Specifically, Petitioner claimed that it did not receive CDP notices and that as a "person liable for the tax," Petitioner was entitled to CDP rights independent of the taxpayer.⁵

Applicable Law

Internal Revenue Code (IRC) §6320(a) requires the IRS to provide the taxpayer with a written notice within 5 business days after the NFTL is filed. This written notice informs the taxpayer of the right to request an administrative hearing on the matter.

Similarly, IRC §6330(a) provides:

“No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made.”

Note that, not less than 30 days before the first levy is initiated, such IRC §6330(a) notice must be: (1) provided in person; (2) left at the taxpayer’s dwelling or usual place of business; or (3) sent by certified or registered mail, return receipt requested, to taxpayer’s last known address.⁶

If taxpayer receives a determination from either an IRC §6320 administrative hearing, or an IRC §6330 administrative hearing, the taxpayer may then seek Tax Court review of that determination within 30 days of the Appeals Office’s issuance of the determination letter.⁷

Additionally, Regs. §§301.6320-1(b)(2), Q&A-B5 and 301.6330-1(b)(2), Q&A-B5, explain that nominees, alter egos, or other persons holding taxpayer’s property are not entitled to a collection due process or equivalent hearing.



Analysis

The Tax Court began by reiterating that as a court of limited jurisdiction, it may “exercise jurisdiction only to the extent expressly provided by statute.”⁸

First, the Tax Court explained that in cases where a taxpayer seeks the redetermination of a deficiency, its jurisdiction depends on the issuance of a notice of deficiency and the timely filing of a petition after the mailing of that notice.⁹

The Tax Court continued by stating:

“The Court’s jurisdiction to review certain collection activity by the IRS under I.R.C. sections 6320 and 6330 depends on the issuance of a valid notice of determination and the timely filing of a petition with this Court for review.”¹⁰

Noting that Petitioner did not dispute that a notice of deficiency was not issued for the 2015 tax year, the Tax Court went on to dismiss Petitioner’s assertion that it was entitled to its own CDP rights. The Tax Court considered Regs. §§301.6320-1(b)(2), Q&A-B5 and 301.6330-1(b)(2), Q&A-B as very clearly providing that, “known nominees of, or persons holding property of, the taxpayer are not entitled to a collection due process or equivalent hearing.”¹¹

Thus, the Tax Court determined that since Petitioner is taxpayer’s alter ego, lacking CDP rights and, thus, precluded from receiving any IRC §6320 or IRC §6330 hearing determinations, the Tax Court likewise lacked jurisdiction to review the lien and levy notices as they pertain to Petitioner.

Additionally, the Tax Court noted that if Petitioner wanted to pursue return of levy proceeds, under IRC §7426, Petitioner could bring a wrongful levy action in District Court.

Conclusion

Although the Tax Court maintains that it is without jurisdiction to hear an appeal by a nominee, transfer-

ee, or alter ego holding property of a taxpayer, other venues exist for seeking relief. Again, alter egos may seek: (1) reconsideration by the IRS office responsible for collecting the tax; (2) National Taxpayer Advocate assistance; (3) or a Collection Appeals Program (CAP), which is an administrative hearing before the Appeals Office.

If you received an IRS levy notice, don't hesitate to contact us at (410) 862-3872 or fill out our online form.

Footnotes

1. *River X, Inc., v. Commissioner*, Docket No. 22324-19L (U.S.T.C. May 29, 2020).
2. *Id.* at 1.
3. *Id.*
4. *Id.* at 2.
5. *Id.* at 3.
6. IRC §6330(A)(2).
7. See *Davis v. Commissioner*, 115 T.C. 35, 37 (2000); *Goza v. Commissioner*, 114 T.C. 176, 179 (2000).
8. *River X, Inc.*, at 2, citing *Breman v. Commissioner*, 66 T.C. 61, 66 (1976).
9. *River X, Inc.*, at 2, citing Rule 13(a) and(c), Tax Court Rules of Practice and Procedure; *Mulvania v. Commissioner*, 81 T.C. 65, 67 (1983); *Brown v. Commissioner*, 78 T.C. 215, 220 (1982).
10. *River X, Inc.*, at 2-3, citing *Orum v. Commissioner*, 123 T.C. 1 (2004), *aff'd*, 412 F.3d 819 (7th Cir. 2005); *Sarrell v. Commissioner*, 117 T.C. 122, 125 (2001); *Moorhous v. Commissioner*, 116 T.C. 263, 269 (2001); *Offiler v. Commissioner*, 114 T.C. 492, 498 (2000).
11. *River X, Inc.*, at 3.

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