

CC-2018-008

July 6, 2018

Subject: Tax Court Case Docketed when no
Notice of Deficiency was Issued
(Premature Petitions) **Cancel Date:** Upon incorporation into
CCDM

Purpose

This notice alerts attorneys that the CCDM is being revised to reflect updated procedures for identifying and handling Tax Court petitions filed by a taxpayer under audit before the issuance of a notice of deficiency, to ensure timely assessment of income, estate, gift, and certain excise taxes. This notice does not apply to employment tax assessments or to proceedings brought under IRC § 7436.¹

Background and Discussion

Section 6503(a) suspends the period of limitations on assessment and collection when a case is docketed in Tax Court in respect of a deficiency. If the Service did not issue a notice of deficiency, the suspension in section 6503(a) does not apply. See IRC § 6503(a) (specifying that the suspension applies “after the mailing of a notice under section 6212(a)”); *Strong v. Commissioner*, 79 F.3d 1154 (9th Cir. 1996). A petition filed before the Service issues a notice of deficiency because the tax year is still under audit or examination is referred to here as a “premature petition.”

This notice contains CCDM revisions to reflect new procedures, developed by Examination and Appeals, to identify and properly handle premature petitions. Under these new procedures, when Appeals Account and Processing Support (APS) is working to locate the administrative file, it will also search for the related notice of deficiency. If APS cannot locate the notice of deficiency, APS will coordinate with Examination to determine if any notice of deficiency or determination was issued to petitioner. If none is found, APS will send a form to Field Counsel to apprise Field Counsel that no notice of deficiency or determination was issued to petitioner. Field Counsel will assist Examination personnel to protect the assessment statute. Field Counsel will also file a motion to dismiss for lack of jurisdiction.² The goal of these new procedures is to ensure that Field Counsel is apprised of the premature petition at the earliest possible date and receives the information necessary to file the motion in a manner that does not disrupt Examination’s work on the case.

¹ See Chief Counsel Notice 2016-002 for Chief Counsel’s litigation position concerning the scope of the Tax Court’s jurisdiction under IRC section 7436.

² There is a template for motions to dismiss premature petitions. See CCDM Exhibit 35.11.1-37.

Distribute to:	X Tax Litigation staff	Tax Litigation staff & Support personnel
	All Personnel	X Electronic Reading Room

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These new procedures are contained in IRM 8.20.5.5.1.5.1, Premature Petition Carding and Certification Procedure. This notice provides updated CCDM guidance that reflects these new procedures.

Questions regarding this Chief Counsel notice should be directed to Branch 1 or 2 of Procedure & Administration at (202) 317-6485 and (202) 317-6844, respectively.

/s/

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CCDM Revisions

To incorporate into the CCDM new procedures addressing premature petitions, two sections of the CCDM will be revised as discussed below.

1. Revisions to CCDM 35.2.1, Petition and Answer; Tax Court Petitions

Section 35.2.1 is being revised. New paragraph (2) is being added to subsection 35.2.1.1.1, Statutory Notices of Deficiency and other Notices Issued by the Service. Existing paragraph (2) and subsequent paragraphs will be redesignated accordingly.

New paragraph (2) is as follows:

(2) If no notice of deficiency is attached to the petition, the attorney should determine whether a notice of deficiency has in fact been issued. If a notice of deficiency has not been issued because the tax year is still under examination, the petition is premature. Generally, Appeals Account and Processing Support (APS) will send Field Counsel a Form 15022, IRS Certification - Income/Gift/Estate Tax Statutory Notice of Deficiency NOT Issued, when APS discovers that a petition is premature for any year upon its attempt to locate an administrative file. See CCDM 35.2.1.1.6, Premature Petitions. For any such year, the attorney should file a motion to dismiss for lack of jurisdiction. See CCDM 35.2.3.4, Absence of a Valid Statutory Notice. Field Counsel should also remind Examination personnel that the statute of limitations on assessment is not tolled by a premature petition, and the ASER must be protected by extending the statute of limitations with Form 872, Consent to Extend the Time to Assess Tax, or other appropriate form, or by issuing a notice of deficiency. See CCDM 35.2.1.1.6, Premature Petitions.

Section 35.2.1 is being revised further to add new subsection 35.2.1.1.6, Premature Petitions. Existing subsection 35.2.1.1.6 and subsequent subsections will be redesignated accordingly. New subsection 35.2.1.1.6 is as follows:

(1) Petitions to the Tax Court in deficiency cases require the issuance of a valid notice of deficiency, or the petitions are subject to dismissal for lack of jurisdiction. If a notice of deficiency has not been issued because the tax year is still under examination, the petition is premature.

(2) Appeals Account and Processing Support (APS) reviews Tax Court petitions when researching docket lists to determine the location of the administrative files. When APS cannot locate a notice of deficiency in a deficiency case, APS sends a Form 15022, IRS Certification - Income/Gift/Estate Tax Statutory Notice of Deficiency NOT Issued, to the manager of the Examination group controlling the taxpayer's return. The manager will complete Form 15022, certifying that the notice of deficiency in question has not been issued and including his or her contact information. A Form 15022 reviewer will then check IRS systems to confirm that no other notice of deficiency or notice of determination has been issued to the taxpayer and, once confirmed, will send the Form 15022 back to APS. APS will forward the Form 15022 to Field Counsel in lieu of the administrative file. See IRM 8.20.5.5.1.5.1, Premature Petition Carding and Certification Procedure.

(3) The suspension of the period of limitations on assessment in IRC section 6503(a) does not apply if the Service did not issue a notice of deficiency. Examination personnel

will continue to work the case even while the year remains docketed in Tax Court. Counsel will be available to assist Examination personnel in ensuring that the period of limitations on assessment does not expire, including reviewing deficiency notices.

(4) Attorneys should move to dismiss the case for lack of jurisdiction. For a discussion of jurisdictional motions in premature petition cases, see CCDM 35.3.2.4(3).

2. Revisions to CCDM 35.3.2, Motions, Jurisdictional Defects

Section 35.3.2 is being revised to amend subsection 35.3.2.4, Absence of Valid Statutory Notice, to add the new procedures for premature petition cases. Subsection 35.3.2.4 is being revised to read as follows:

(1) Petitions to the Tax Court in deficiency cases challenging the proposed assessment of income, estate, gift, and certain excise tax may be predicated only upon the issuance of a valid statutory notice of deficiency.

(2) A petition in a deficiency case that is filed before the Service issues a notice of deficiency does not confer jurisdiction on the Tax Court. The Tax Court does not acquire jurisdiction upon the issuance of a 30-day letter, notice of rejection of a claim for refund, or other similar notices with respect to the taxpayer's tax liability. If a notice of deficiency has not been issued because the tax year is still under examination, the petition is premature.

(3) If the petition is premature, attorneys should move to dismiss the case for lack of jurisdiction. In this instance, the motion should make out a prima facie case that the petition is based upon a 30-day letter, notice of rejection of a claim for refund, or other similar notice, or not based on any communication from the Service at all. In premature petition cases, Field Counsel will generally receive a Form 15022, IRS Certification - Income/Gift/Estate Tax Statutory Notice of Deficiency NOT Issued from Appeals Account and Processing Support (APS). See CCDM 35.2.1.1.6, Premature Petitions. If Field Counsel does not receive a Form 15022, Field Counsel must conduct a search to verify that a notice of deficiency or other determination letter that would confer jurisdiction on the Tax Court has not been issued to the taxpayer for the tax/period at issue. The jurisdictional motion should state that a search was conducted and no notice of deficiency or any other determination letter that may form the basis of a petition to the court was found. Form 15022 may be relied on in place of attorneys conducting a search, but it is not to be attached as an exhibit to the jurisdictional motion.

(4) The IRC section 6503(a) suspension of the periods of limitations on assessment and collection does not apply if the Service did not issue a notice of deficiency. As a result, Field Counsel will be available to assist Examination personnel in ensuring that timely assessments are made in these cases. See CCDM 35.2.1.1.6, Premature Petitions.