

ID: CCA_2009110516582903

Number: **200949046**

Release Date: 12/4/2009

Office:

UILC: 6330.00-00

From:

Sent: Thursday, November 05, 2009 4:58:31 PM

To:

Cc:

Subject: CDP case where SNOD was returned to Service unclaimed

Taxpayers may challenge the existence or amount of their underlying liability during a CDP hearing if the taxpayer did not receive a statutory notice of deficiency for the tax liability or did not otherwise have an opportunity to dispute the tax liability. I.R.C. § 6330(c)(2)(B). If the record reflects that the Service properly mailed the statutory notice of deficiency to the taxpayer, then a presumption of regularity, delivery, and receipt arises. See e.g. *Sego v. Commissioner*, 114 T.C. 604 (2000); *Bailey v. Commissioner*, T.C. Memo 2005-241; see also generally *United States v. Ahrens*, 530 F.2d 781, 785 (presumption of regularity supports official acts of public officials and, in absence of contrary evidence, courts presume they have properly discharged official duties).

However, when a statutory notice of deficiency is returned to the Service unclaimed, the presumption of regularity, delivery, and receipt can be rebutted by credible testimony that denies receipt. See e.g. *Tatum v. Commissioner*, T.C. Memo 2003-115. In *Tatum*, a denial of receipt and evidence that the postal service returned the notice of deficiency after only one attempt at delivery was sufficient to rebut the presumptions of delivery and receipt.

In contrast, in *Cyan v. Commissioner*, T.C. Memo 2009-44, a statutory notice of deficiency was returned to the Service unclaimed. The Service brought forth evidence that postal employees place a Form 3849 in mailboxes to notify recipients of their receipt of certified mail. If the recipient does not claim the certified mail within five days, the post office issues another Form 3849 to the recipient. The Service also brought forth evidence that the stamps placed on the envelope returned to the Service indicated the petitioner did not pick up the statutory notice of deficiency after receiving two notifications to do so. Based on this evidence, the Tax Court found that the petitioner had refused delivery of the statutory notice of deficiency and his refusal precluded him from challenging liability under § 6330(c)(2)(B). Id. Similarly, when a statutory notice of deficiency was returned to the Service unclaimed with an envelope indicating that delivery had been attempted three times, the Tax Court found § 6330(c)(2)(B) precluded the taxpayer from challenging his underlying liability during his CDP hearing. *Casey v. Commissioner*, T.C. Memo 2009-131.

In your case, if the taxpayer brings forward credible evidence that he did not receive the statutory notice of deficiency, then the taxpayer may challenge his underlying liability during his CDP hearing. This credible evidence should be in addition to the fact that statutory notice of deficiency was returned to the Service as unclaimed. If the taxpayer offers no additional information to rebut the presumption of regularity, delivery, and receipt, then § 6330(c)(2)(B) precludes the taxpayer from challenging underlying liability during the CDP hearing.

Please let me know if you would like to discuss this further.