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**From:**

**Sent:** Wednesday, October 03, 2012 3:36:07 PM

**To:**

**Cc:**

**Subject:** FW: CDP - POA - Non-receipt of Notice

Hi

This is to follow up on our telephone conversation concerning the validity of the notice of determination. It is our understanding that the Forms 2848 submitted by the husband and wife taxpayers list different addresses for the representative, and only one of those addresses was correct. Each of the Forms 2848 stated on line 7 that the original notices and other written communications would be sent to the taxpayer and a copy of the notices and other written communications would be sent to the representative. The settlement officer conducting the taxpayers' CDP hearing sent all correspondence, including the conference letter, to the taxpayers at their correct (and last known) address with copies to the representative at the incorrect address provided on one of the Forms 2848. The representative has said that he did not receive copies of the conference letter or other correspondence sent by the settlement officer. The representative said that he received calls from the settlement officer and returned them. The settlement officer stated that the representative never returned her calls. Appeals issued a notice of determination sustaining the collection action and sent it to the taxpayers by certified mail to the taxpayers' last known address with a copy to the representative at the incorrect address. The 30-day period for filing a petition with the Tax Court pursuant to section 6330(d)(1) has expired. The representative has requested that the notice of determination be rescinded and the hearing resumed.

The notice of determination in this case is valid. The Tax Court has held that a valid notice of determination for section 6330(d)(1) jurisdictional purposes must be "a written notice that embodies a determination to proceed with collection of the taxes in issue." Lunsford v. Commissioner, 117 T.C. 159, 164 (2001). In determining its jurisdiction, the court will not look behind a notice of determination to inquire about whether the taxpayer was given a hearing satisfying the requirements of section 6330. Id. at 162-164. The Tax Court has also concluded that a notice of determination is valid if it was sent by certified or registered mail to the taxpayer's last known address. Weber v. Commissioner, 122 T.C. 258, 261-262 (2004). The notice of determination in this case was a written notice of Appeals' determination that the collection of the taxes in issue may proceed. It was sent by certified mail to the taxpayers' last known address. The failure to send a copy of the notice of determination to the representative's correct address does not invalidate the notice of determination. Cf. McDonald v. Commissioner, 76 T.C. 750, 753 (1981) (explaining that the Service sends copies of notices of deficiency to representatives as a matter of courtesy and that failure to send such a copy does not affect the validity of the notice of deficiency). The notice of determination issued in this case is valid and would have provided a basis for Tax Court jurisdiction if the taxpayers had filed a petition within the 30-day period specified in section 6330(d)(1).

As I indicated on the phone, Appeals cannot rescind or withdraw a notice of determination (see IRM 8.22.9.15).

If you have any further questions or if I can be of further assistance, please give me a call.

Thanks,