

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 18-60536  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

November 27, 2019

Lyle W. Cayce  
Clerk

CHARLES D. WILLIAMS,

Petitioner–Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent–Appellee.

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Appeal from the United States Tax Court  
No. 25567-16L

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Before OWEN, Chief Judge, and DENNIS and CLEMENT, Circuit Judges.

PER CURIAM:\*

Charles D. Williams failed to file tax returns for years 2005 through 2015. The Commissioner of the Internal Revenue Service (IRS) prepared substitute returns for 2005-2010 and mailed a notice of deficiency, which Williams never received. After the IRS mailed notices of lien and intent to levy, Williams appealed but refused to participate in the IRS appeals process and appealed to the Tax Court. The Tax Court determined that the IRS

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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complied with its requirements to collect the deficiency and affirmed. We find no reversible error in the Tax Court's assessment and consequently affirm.

I

Williams is a self-employed individual working in the equipment brokerage business. He has resided at the same home in Euless, Texas from the 1970s through the date of the Tax Court proceedings.

Williams failed to prepare tax returns for years 2005-2015. After an audit of his business, the Commissioner prepared substitute returns pursuant to 26 U.S.C. §6020(b). On November 12, 2014, the Commissioner mailed a notice of deficiency for 2005-2010 to Williams's home address in Euless, Texas. In addition to a substantial tax deficiency, the notice asserted additions to tax for failure to file returns (26 U.S.C. § 6651(a)(1)), failure to pay taxes due (26 U.S.C. § 6651(a)(2)), and failure to make estimated tax payments (26 U.S.C. § 6654). The Commissioner sent a duplicate notice the same day to Williams's P.O. Box in Dallas, Texas.

The Commissioner sent these duplicate deficiency notices to Williams by certified mail (United States Postal Service (USPS) Forms 3877). The USPS tracking information shows that the notice of deficiency was delivered to the Euless residence on November 13, 2014, but could not be left because no authorized recipient was available. The Postal Service held the notice for collection until December 17, 2014, at which time it returned the notice to the Commissioner as "unclaimed." The envelope addressed to the Dallas P.O. Box shows that USPS was unable to forward the item to a new address. There is no evidence that Williams ever received or was aware of the notices. Because Williams did not contest the notice of deficiency, on May 18, 2015, the Commissioner assessed the deficiencies pursuant to 26 U.S.C. § 6201.

On October 13, 2015, the IRS sent Williams a Notice of Federal Tax Lien Filing and Your Right to a Hearing (Notice of Lien). The Notice of Lien was

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sent to a different P.O. Box in Bedford, Texas. The Notice of Lien informed Williams of his right to request a Collection Due Process (CDP) or equivalent hearing. Williams filed a request for a hearing on November 18, 2015. Williams asserted that he was “disputing the alleged taxes and penalties” because he “never had an opportunity to challenge it previously.” He requested a face-to-face hearing and verification that the IRS followed the procedures required by law. He also requested collection alternatives, though he did not suggest any.

On December 3, 2015, the IRS sent a Final Notice of Intent to Levy and Notice of Your Right to a Hearing (Notice of Intent to Levy). This notice was also sent to the Bedford P.O. Box. On December 30, 2015, Williams filed a timely request for a CDP hearing, which he supplemented on January 6, 2016.

The IRS Office of Appeals sent Williams a letter on June 16, 2016, informing him that his case was assigned to Settlement Officer Jean West. Officer West informed Williams that he was not eligible for a face-to-face hearing and scheduled a telephonic hearing for July 21, 2016. The letter advised Williams that the tax assessments were valid because the IRS had sent him duplicative notices of deficiency to his last known addresses. The letter also advised Williams that if he submitted his own returns, he would be eligible for audit reconsideration.

Williams responded via letter on July 11, 2016, asserting that he was entitled to a face-to-face hearing and requesting proof of the underlying tax liability. Officer West responded on August 2, 2016, stating that Williams had not called for the scheduled hearing on July 21 and informing him that he had 14 days to provide any new information to be considered before she made a determination.

Williams responded with a letter on August 15, 2016, stating that he never received the notice of deficiency because it had allegedly been sent to an

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incorrect address. To support this claim, Williams attached a handwritten letter dated October 1, 2014, indicating that his new address is the Bedford P.O. Box. That letter was addressed to the IRS at 1111 Constitution Avenue NW, Washington, DC 20224. Williams did not provide further proof that he had mailed the change-of-address letter.

Officer West determined that the Bedford P.O. Box was not Williams's address at the time the deficiency notice was mailed, and his October 1, 2014 letter was not valid because he did not provide proof that it had been mailed to the IRS. On October 28, 2016, the Office of Appeals sent Williams notices of determination sustaining its tax lien and proposed levy. In the attached memorandum, the Office of Appeals asserted that the notice of deficiency had been properly sent to Williams's last known addresses—the Eules residence and Dallas P.O. Box—and that the assessments were properly made. The Office of Appeals relied on two key factors in this determination. First, it noted that the Eules residence continued to be Williams's home address. Second, it noted that USPS regulations state that if the addresses to which the notice of deficiency were mailed were incorrect, the certified mail would have been returned as “undeliverable as addressed” or “unable to forward,” rather than as “unclaimed.”

Williams then filed a petition in the Tax Court challenging the Office of Appeals' determination. The Tax Court set the matter for trial on November 27, 2017, and issued an order requiring the parties to stipulate to the facts and evidence by that date. The Commissioner filed a motion for summary judgment, arguing that the Office of Appeals did not abuse its discretion because Williams had failed to provide the requested financial information, file overdue returns for 2005-2015, and participate in the telephonic hearing. Williams opposed the motion and cross-moved for summary judgment. However, Williams agreed that the exhibits attached to

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the Commissioner's motion for summary judgment constituted the administrative record. Williams argued, *inter alia*, that the deficiency notice was not mailed to his last known address.

The parties stipulated to most facts but disagreed about whether the deficiency notice had been mailed to taxpayer's last known address. Accordingly, the Tax Court denied the pending motions for summary judgment and proceeded to trial on the issue of whether the notice of deficiency had been sent to Williams's last known address.

At the trial, Williams admitted that he lived at the Euless residence but claimed that he "did not receive any mail at [his] home because of vandalism to [his] mailbox." He further averred that the Bedford P.O. Box was his mailing address at the time the notices of deficiency were mailed but declined to put forth any evidence to support his claim. Nor did he provide any evidence challenging his tax liability. The Tax Court ruled against Williams and found that he had failed to alert the IRS to his change of address prior to November 12, 2014. The Tax Court also determined that, assuming Williams had not received the notice of deficiency, he was given an ample opportunity to challenge the deficiency in the CDP hearing and failed to contest it. Williams moved for reconsideration of the Tax Court's decision, which the Tax Court denied. Williams appeals.

## II

This court reviews decisions of the Tax Court using the same standards we use to review the decisions of district courts.<sup>1</sup> We review findings of fact for clear error and questions of law *de novo*.<sup>2</sup> Williams contends that the Tax Court erred in finding that the notice of deficiency had been mailed to his last

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<sup>1</sup> *Estate of Duncan v. Comm'r*, 890 F.3d 192, 197 (5th Cir. 2018) (citing *Rodriguez v. Comm'r*, 722 F.3d 306, 308 (5th Cir. 2013)).

<sup>2</sup> *Id.* (citing *Terrell v. Comm'r*, 625 F.3d 254, 258 (5th Cir. 2010)).

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known address. He also takes issue with his burden of proof in the proceedings, argues that he was denied due process by the IRS Office of Appeals, and asserts that the Tax Court exceeded its authority by taking evidence on a disputed factual issue.

**A**

We begin with Williams's argument that the Tax Court exceeded its authority by taking evidence on a disputed matter. The Commissioner acknowledges that Williams is generally correct that the Tax Court's review of CDP proceedings should be limited to the administrative record before it.<sup>3</sup> However, we have previously endorsed the Tax Court's practice of taking evidence following a CDP hearing.<sup>4</sup> We decline to resolve this issue because even assuming that the Tax Court erred by conducting a hearing and admitting evidence, the administrative record adequately supports its decision.

**B**

Whether a notice of deficiency is sent to a taxpayer's last known address is a question of fact we review for clear error.<sup>5</sup> If the IRS fails to properly mail a deficiency notice, any subsequent assessment or collection of the deficiency is invalid.<sup>6</sup> Conversely, if the notice is properly mailed, 26 U.S.C. § 6212 does not require receipt of the notice for it to be valid.<sup>7</sup> Code § 6212(b) provides that a notice of deficiency, "if mailed to the taxpayer at his last known address, shall

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<sup>3</sup> See *Murphy v. Comm'r*, 469 F.3d 27, 31 (1st Cir. 2006) (quoting *United States v. Carlo Bianchi & Co.*, 373 U.S. 709, 714-15 (1963)).

<sup>4</sup> See *Jones v. Comm'r*, 338 F.3d 463, 466-67 (5th Cir. 2003).

<sup>5</sup> *Ward v. Comm'r*, 907 F.2d 517, 521 (5th Cir. 1990); *Terrell*, 625 F.3d at 259.

<sup>6</sup> See *Perez v. United States*, 312 F.3d 191, 196 (5th Cir. 2002) (citing *McCarty v. United States*, 929 F.2d 1085, 1089 (5th Cir. 1991)).

<sup>7</sup> 26 U.S.C. §6212(a); see also *Pomeroy v. United States*, 864 F.2d 1191, 1195 (5th Cir. 1989).

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be sufficient.”<sup>8</sup> The phrase “last known address” is a term of art defined by Treasury Regulations as “the address that appears on the taxpayer’s most recently filed and properly processed Federal tax return, unless the [IRS] is given clear and concise notification of a different address.”<sup>9</sup> The regulations in turn reference Revenue Procedure 90-18 or any subsequent procedures promulgated by the IRS as describing the proper procedure to inform it of a change of address.<sup>10</sup> The IRS must also exercise reasonable diligence to determine the taxpayer’s last known address in light of all relevant circumstances.<sup>11</sup> The proper inquiry for reasonable diligence examines the facts the IRS knew or should have known at the time it sent the notice.<sup>12</sup>

The question before this court is whether Williams had delivered a “clear and concise” notification to the IRS prior to the November 12, 2014 Notice of Deficiency, indicating that he wished his last known address to be the Bedford P.O. Box. The Revenue Procedure in effect at the time provided that taxpayers could update their address (1) electronically through the IRS website, using Form 8822, Change of Address; (2) by written communication to the service center serving the old address; (3) by written communication in response to communications by an IRS agent; or (4) orally by informing an employee who has access to the Service Master File.<sup>13</sup>

Officer West refused to consider the October 1, 2014 notification because it did not include proof of mailing. The Tax Court acknowledged that Williams must have sent some notification of change of address because the IRS mailed

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<sup>8</sup> 26 U.S.C. § 6212(b).

<sup>9</sup> Treas. Reg. § 301.6212-2(a) (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *Terrell v. Comm’r*, 625 F.3d 254, 259 (5th Cir. 2010).

<sup>12</sup> *Id.* at 260.

<sup>13</sup> Rev. Proc. 2010-16, 2010-19 I.R.B., available at <https://www.irs.gov/pub/irs-utl/rp-10-16.pdf>.

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subsequent notices to the Bedford P.O. Box in 2015. However, the letter was not addressed to any of the departments of the IRS identified in the Revenue Procedure. Assuming Williams mailed the letter on October 1, that was only 43 days before the Notice of Deficiency, not the 45 days described by the Revenue Procedure.<sup>14</sup>

In *Ward v. Commissioner*, we previously held that the IRS did not exercise reasonable diligence in determining the taxpayer's last known address when it did not comply with the change-of-address notification mailed 15 days prior to the notice of deficiency.<sup>15</sup> In that case, the IRS acknowledged receipt of the change-of-address notification and there was no doubt as to when it was received by the IRS.<sup>16</sup> We agreed that the IRS is entitled to a reasonable time to process notifications of change of address from taxpayers but also held that the IRS did not exercise reasonable diligence in that case.<sup>17</sup> That decision predated the regulations and Revenue Procedure on which the Commissioner relies,<sup>18</sup> but we have subsequently applied the "reasonable diligence" requirement.<sup>19</sup> Regardless, *Ward* is distinguishable because in this case, it is not clear when the IRS received Williams's letter.

We need not decide whether the Commissioner is automatically entitled to 45 days to process a change-of-address notification based on its Revenue Procedure or whether the regulations and Revenue Procedure entitle the IRS to more time to process notifications. There is doubt as to when Williams mailed his clear and concise notice of change of address. Officer West did not

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<sup>14</sup> See Rev. Proc. 2010-16 at 9.

<sup>15</sup> 907 F.2d 517, 518 (5th Cir. 1988).

<sup>16</sup> *Id.* at 522.

<sup>17</sup> *Id.*

<sup>18</sup> See Definition of Last Known Address, 66 Fed. Reg. 2817, 2820 (enacting 26 C.F.R. § 301.6212-2 effective January 12, 2001).

<sup>19</sup> See *Terrell v. Comm'r.*, 625 F.3d 254, 258-60 (5th Cir. 2010).



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act arbitrarily or capriciously when she found Williams's evidence insufficient. Accordingly, the Tax Court did not err in affirming the IRS Office of Appeals' decision and there is not sufficient evidence to overturn the Tax Court's finding that Williams's last known address had not changed by November 12, 2014.

## C

Having found that the IRS properly mailed the statutory notice of deficiency, the Tax Court did not err in affirming the actions of the Commissioner. "In a collection due process case in which the underlying tax liability is properly at issue, the Tax Court (and hence this [c]ourt) reviews the underlying liability *de novo* and reviews the other administrative determinations for an abuse of discretion."<sup>20</sup> Where the liability is not properly at issue, we review only for abuse of discretion.<sup>21</sup> A taxpayer may challenge the underlying liability in a CDP hearing if he did not receive any statutory notice of deficiency or did not otherwise have an opportunity to dispute such tax liability.<sup>22</sup>

Williams primarily takes issue with his burden of proof in the proceedings below. The Commissioner's determinations as to a tax deficiency are presumptively correct, and the taxpayer generally bears the burden of proving otherwise.<sup>23</sup> Apart from a naked assertion that his records showed he did not owe any taxes, Williams did not provide any evidence to the Commissioner or to the Tax Court showing that the deficiency was erroneous. Williams has not identified any basis for shifting that burden for his general liabilities, but has pointed to 26 U.S.C. § 7491(c), which shifts the burden to the Commissioner to establish liability for any penalty, addition to tax, or

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<sup>20</sup> *Christopher Cross, Inc. v. United States*, 461 F.3d 610, 612 (5th Cir. 2006) (quoting *Jones v. Comm'r*, 338 F.3d 463, 466 (5th Cir. 2003)).

<sup>21</sup> *Id.*

<sup>22</sup> 26 U.S.C. § 6330(c)(2)(B).

<sup>23</sup> *Welch v. Helvering*, 290 U.S. 111, 115 (1933).

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additional amount. The Commissioner satisfied its burden of proving the additions to tax based on the undisputed liabilities. It is undisputed that Williams did not file tax returns for 2005-2010, failed to pay taxes due, and failed to make estimated tax payments. The Tax Court did not err in affirming the Commissioner's assessments.

**D**

Finally, Williams argues that he was denied constitutionally effective due process of law. He was not. The Commissioner apprised him of a deficiency and the specific amounts of the penalty in the October 13, 2015, Notice of Lien.<sup>24</sup> The IRS provided the statutorily required CDP hearing and Williams declined to avail himself of the opportunity to challenge the deficiency. Nothing more was required.

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The IRS was within its discretion to assess the liabilities and levy to collect them. The Tax Court did not err in deferring to the IRS. The judgment of the Tax Court is **AFFIRMED**.

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<sup>24</sup> See *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (“[A] fundamental requirement of due process in any proceeding...is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”).