8 T.C. 207 (1947)

A notice of transferee liability sent by the IRS to an address that is not the taxpayer's "last known address" does not constitute a valid statutory notice, and a petition based on such notice filed more than 90 days after the original mailing is untimely, depriving the Tax Court of jurisdiction.

Summary

Carbone and Sandler were stockholders and officers of Villanova Officers' Club, Inc. The IRS seized the Club's premises and later sent notices of transferee liability to the Club's address, not the individuals' known home addresses. These notices were returned undelivered. Copies were later sent to the petitioners' attorney, and petitions were filed more than 90 days after the original mailing. The Tax Court held it lacked jurisdiction because the original notices were not sent to the petitioners' last known addresses and the subsequent petitions were untimely. The court emphasized the IRS had actual knowledge of the petitioners' correct addresses.

Facts

The Villanova Officers' Club, Inc., operated a cabaret in Fayetteville, NC. Carbone and Sandler were stockholders and officers.
On August 4, 1945, the IRS seized the Club's premises. Petitioners were denied entry thereafter.
Sandler resided at 120 Lamon Street, and Carbone at 1414 Fort Bragg Road, Fayetteville.
IRS agents interviewed both petitioners on August 4, 1945, and recorded their home addresses. Carbone also stated he would be moving to Brooklyn, NY.
The IRS sent notices of transferee liability by registered mail to the Club's address on September 12, 1945. These were returned undelivered.
The Deputy Commissioner mailed copies of the notices to petitioners' attorney on February 18, 1946.

Procedural History

The IRS determined deficiencies against Villanova Officers' Club, Inc., and sought to hold Carbone and Sandler liable as transferees.
The IRS sent notices of transferee liability to the Club's address, which were returned undelivered.
Carbone filed a petition with the Tax Court on May 20, 1946, and Sandler on June 18, 1946.
Both the IRS and the petitioners moved to dismiss for lack of jurisdiction.

Issue(s)

Whether the Tax Court lacks jurisdiction because the notices of transferee liability were not sent to the petitioners' last known addresses.

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Whether the petitions were timely filed, considering they were filed more than 90 days after the original mailing but within 90 days of receiving copies of the notices.

Holding

Yes, because the IRS failed to send the notices to the petitioners' last known addresses, depriving them of proper statutory notice.
No, because the petitions were filed more than 90 days after the original (albeit improper) mailing of the notices and the copies sent to the attorney did not constitute valid statutory notice. Therefore, the petitions were untimely.

Court's Reasoning

The court emphasized that under Section 311(e) of the Internal Revenue Code, notice of liability is sufficient if mailed to the person subject to the liability at their last known address.
The court distinguished *Commissioner v. Rosenheim*, stating that in that case, the taxpayer received actual notice and filed a timely petition, thereby waiving any irregularity in service. Here, the notices were returned, never remailed, and the petitions were untimely.
The court found that the IRS had actual knowledge of the petitioners' home addresses because its agents had interviewed them and made written memoranda of their addresses. Sending notices to the seized Club premises was insufficient.
The court cited *William M. Greve*, holding that a notice of transferee liability not sent to the taxpayer's last known address is not a statutory notice.
The court stated that the petitioners did not waive the improper notice by filing untimely petitions, as they consistently maintained there was no proper notice of transferee liability.

Practical Implications

This case underscores the IRS's obligation to send notices of deficiency or transferee liability to the taxpayer's last known address. This obligation extends to situations where the IRS has actual knowledge of a taxpayer's address, even if it differs from the address previously used.
Practitioners should advise clients to promptly notify the IRS of any address changes to ensure proper notification of tax matters.
This case clarifies that merely possessing a taxpayer's address imposes a duty on the IRS to use it; sending notices to a previous address, even if still associated with the taxpayer, may be deemed insufficient.
Untimely petitions based on improperly addressed notices will be dismissed for lack of jurisdiction, even if the taxpayer eventually receives actual notice through other means. This stresses the importance of strict compliance with statutory notice requirements.

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