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AN ANALYSIS OF SELECTED PROBLEMS ARISING FROM THE NINETY DAY LETTER

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United States Courts have heard numerous cases in the field of federal income, estate, and gift taxation, concerning the procedural aspects of the statutory notice of deficiency,[1] commonly referred to as the "ninety day letter." The ninety day letter is the taxpayer's passport to the Tax Court. Without it the taxpayer cannot litigate in that forum, nor can the Commissioner assess and collect a deficiency. Thus, the problems arising from this letter are most difficult for the practitioner. If the taxpayer receives a ninety day letter that appears defective, either as to the last known address or method of transmittal, he has two alternatives. If he files a timely petition with the Tax Court, he may waive the defect. If he does not file a

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[1] INT. REV. CODE OF 1954, § 6212 concerning notice of deficiency reads as follows:

(a) *In General*

If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitles A or B, he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

(b) *Address for Notice of Deficiency*

(1) *Income and gift taxes.*—In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A or chapter 12, if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) *Joint income tax return.*—In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary or his delegate has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) *Estate tax.*—In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice

timely petition, then he may have to pay the tax, and sue in District Court for a refund. Questions often arise as to whether the taxpayer is entitled to injunctive relief[2] and as to whether the period of limitations has been suspended by proper assessment procedure.[3] It is evident, then, that a number of vital interests of the taxpayer are determined by the validity of the notice of deficiency.

Various disputes may arise over the authority of the Commissioner's ninety day letter. If the letter as originally sent by registered mail fails for lack of compliance with the statute, the Commissioner is faced with the decision of whether to undertake some form of manual delivery. Since manual or actual delivery is of questionable validity under the statute, the Commissioner always incurs the possibility of litigation. The taxpayer, on the other hand, is faced with the problem of what disposition to make of a notice of deficiency which he considers to be unlawfully served upon him. Considerable litigation has resulted from the fact that there is no real definition of the term "last known address", which raises the question of whether the taxpayer has given notice to the Commissioner sufficient to have put the Commissioner in a position that he *cannot deny* knowledge of the new address. While these categories do not encompass all of the problems which might arise in connection with the ninety day letter, they are the problems which will be discussed in this article.

PROBLEMS IN REGARD TO ACTUAL DELIVERY

Generally the Tax Court has no jurisdiction unless the notice of deficiency is sent to the taxpayer at his last known address[4] by registered mail in accordance with the statute. This rule, in conformity with other tax rules, is not universal in its application,

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of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) *Further Deficiency Letters Restricted*

(1) *General rule.*—If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary or his delegate shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b) (1) (relating to mathematical errors), or in section 6861(c) (relating to the making of jeopardy assessments).

[2] Slaven v. United States, No. 14132-WB, S.D. Cal., Oct. 21, 1952; 45 Am. Fed. Tax R. 1256.

[3] INT. REV. CODE OF 1954, §§ 6502, 6503.

[4] See Brodsky, *Adequacy of Notice of Deficiency*, N. Y. U. 18TH INSTITUTE ON FED. TAX (1960).

and may be applied differently, or not applied at all, depending on the forum. In numerous instances, the question has arisen as to whether some other type of actual notice will suffice if the taxpayer is not damaged thereby. The early case of *Olsen v. Helvering*[5] held that the purpose of the notice of deficiency is to advise the taxpayer who is to pay the deficiency that the Commissioner means to assess him, and any notice which unequivocally accomplishes this purpose is good. This Second Circuit decision is clearly contrary to a literal reading of the statute. The statute and the cases construing it have, through the years, served as a basis for numerous lawsuits.

In 1951, the Sixth Circuit case of *Commissioner v. Stewart*[6] used the same reasoning as the *Olsen* case and indicated that the provisions of the statute need *not* be literally complied with. The court felt that Section 6212(a) of the 1954 Code was not mandatory in its application, and that actual receipt of the notice, coupled with a timely petition to the Tax Court, would indicate a waiver of defects in the statutory scheme of notice.

The Ninth Circuit met the issue of actual notice in the case of *Boren v. Riddell.*[7] The Commissioner mailed a notice of deficiency by *ordinary* mail, which was received by the taxpayer on the following day. The taxpayer contended that the assessment was invalid since it did not fulfill the statute literally. The court pointed out that the statute now does not limit the *manner* in which notice may be sent, but merely *authorizes* the mailing of deficiency notices by registered mail. The court indicated that the time limit for filing a petition to the Tax Court would begin with the receipt of notice in such cases. This theory was adopted by the court in two later cases.[8]

Commissioner v. Rosenheim,[9] a case from the Third Circuit, expressed doubt that actual service will suffice when the original registered notice fails. Here the original registered letter was returned to the Commissioner undelivered. It was then hand delivered to the taxpayer. The taxpayer filed a timely petition to the Board of Tax Appeals, contending that the original notice was void and that the board lacked jurisdiction. On appeal, the Court of Appeals went to great lengths to establish that the original notice was valid. It is submitted that a much easier result would be to hold that if a taxpayer actually received notice, he would be precluded from challenging the court's jurisdiction. The fact that this court did *not* base its decision on actual service indicates that hand delivery was not acceptable to invoke the jurisdiction

[5] 88 F.2d 650 (2d Cir. 1937).

[6] 186 F.2d 239 (6th Cir. 1951).

[7] 241 F.2d 670 (9th Cir. 1957).

[8] Cohen v. United States, 297 F.2d 760 (9th Cir. 1962); Tenzer v Commissioner, 285 F.2d 956 (9th Cir. 1960).

[9] 132 F.2d 677 (3d Cir. 1942).

of the Board of Tax Appeals. At least one Tax Court decision is to the same effect.[10]

A recent Ninth Circuit case has created considerable uncertainty as to the need in that circuit for literal compliance with the statute.

In *Rosewood Hotel, Inc. v. Commissioner*, the court quoted the following statement from the decision of the Tax Court below:

> "[The Tax Court] . . . would have no jurisdiction . . . if . . . the notice of deficiency was not mailed to the petitioner's last known address within the knowledge of the Commissioner but was mailed by registered mail to some other address, was returned to the sender by the post office, and then was delivered to the petitioner by some way other than by registered mail . . . ."[11]

The Circuit Court did not specifically rebut the statement, but merely remanded the case to the Tax Court with instructions to state the reason for dismissal. If they had believed actual service would suffice, then it would have been proper to remand with instructions dismissing in favor of the Commissioner, since the taxpayer *admitted* that he had received actual notice, and was basing his case solely on the alleged defective registered letter. Thus, there is indication in the Ninth Circuit that other types of actual delivery will not invoke the jurisdiction of the Tax Court.

The Tax Court has given indication that it does not agree with the philosophy propounded in the *Olsen, Stewart,* and *Boren* cases. In the case of *John W. Heaberlin*[12] the original notice of deficiency was defective. The taxpayer personally went to the post office, where the notice was hand delivered to him by postal authorities. The language in that case indicates that a proper notice was *never* given, even though notice was given to him in person. On the other hand, the Tax Court seems to have gone along with the liberal interpretation of the statute in the case of *Clement Brzezinski.*[13] There the statute was interpreted to mean that the notice is proper when received by the taxpayer in "due process" of mailing, even though not sent to the last known address.

From an analysis of the above decisions, there is indication that legal thinking is evolving toward a liberal construction of 6212(a). This is especially true in the Court of the Second and Sixth Circuits which have cases clearly in point. Although the Tax Court decisions are extremely confusing, the case of *Clement Brzezinski* indicates that they may be essentially in accord with the Circuit Courts if the issue presents itself clearly. The reports of the Senate Finance Committee[14] reveal that sending of the

[10] Abraham Goldstein, 22 T.C. 1233 (1954).
[11] 275 F.2d 786, 787-788 (9th Cir. 1960).
[12] 34 T.C. 58 (1960).
[13] 23 T.C. 192 (1954).
[14] S. REP. No. 1983, 85th, Cong. 2d Sess. 102 (1958).

notice by registered mail is *compulsory* upon the Commissioner, and that the word "authorized" as used in the statute, means that the Commissioner is authorized to *send* a notice of deficiency, but once he decides to send it, he is *bound* to send it by registered mail, to the *last known address.*

Better reasoning seems to be on the side which advocates a liberal construction, since, in any legal proceeding, the courts are generally concerned only with the question whether the litigants received notice of sufficient character so as not to be prejudiced thereby. Courts will undoubtedly come more and more to adapt this philosophy in future years. If the theory of the *Stewart, Boren,* and *Olsen* cases is accepted by other tribunals, the litigation in regard to last known address will be minimized, for the Commissioner normally gives some type of actual notice, even though originally the ninety day letter may not technically have been sent to the last known address by registered mail.

METHODS OF ATTACKING A QUESTIONABLE NOTICE

In numerous instances, when the taxpayer is confronted with a notice of deficiency mailed contrary to the provisions of the statute, he chooses a policy of recognizing the notice and attacking its validity by virtue of a timely Tax Court petition.[15] Many times, cases of this nature depend on the question of waiver,[16] and the court holds that, if a timely petition is filed, then the alleged defects in the notice are waived. Other cases hold that the timely petition itself indicates adequate notice.[17]

The case of *William M. Greve*[18] provided one of the first judicial utterances on the question of waiver and estoppel. In that case, the petitioner stated on his return that his address was New York, New York. The Commissioner mailed the notice of deficiency to Brooklyn, New York. A petition was filed by the taxpayer to the Board of Tax Appeals for the purpose of having the board rule on the question of jurisdiction. In dismissing the case in favor of the taxpayer, the court stated, "In this case, there has been neither waiver nor estoppel, but an unwaivering insistence by the taxpayer that there was no proper notice of deficiency." Thus, from the *Greve* case, the rule was derived that a taxpayer *could* challenge the authority of a notice of deficiency by a timely petition. This liberal rule, however, did not long withstand the onslaught of judicial process without some amendment. The question of waiver again was at issue in the 1942 case of *Commissioner v. Rosenheim.*[19] The petitioner in that case filed with the Board of Tax Appeals within ninety days after the mailing of the alleged

[15] William M. Greve. 37 B.T.A. 450 (1938).
[16] Commissioner v. Rosenheim, 132 F.2d 677 (3d Cir. 1942).
[17] Clement Brzezinski, 23 T.C. 192 (1954).
[18] 37 B.T.A. 450 (1938).
[19] 132 F.2d 677 (3d Cir. 1942).

defective notice. Petitioner contended in her petition that the Tax Court had no jurisdiction, since the Commissioner had not mailed notice to her last known address. The Circuit Court for the Third Circuit held that she had waived any defect in jurisdiction by the filing of a timely petition. This decision was followed in *Estate of George F. Hurd*[20] where the Tax Court held that if a notice is received in due process of mailing, even though, the notice may not be technically sent to the last known address, a timely petition will waive the defects in jurisdiction. The ultimate application of the waiver-estoppel theory appeared in the Tax Court's dicta in *Marjorie F. Birnie.*[21] The court there stated that a petitioner, by the filing of a timely petition, "does not waive all errors or irregularities in the notice, but may obtain a dismissal for lack of jurisdiction upon a showing that there was an error or irregularity of sufficient magnitude to nullify the notice." The judicial thinking appears to have evolved from an extremely liberal attitude in the *Greve* case, to a rather harsh attitude in *Rosenheim,* and then to have settled in the middle in *Marjorie F. Birnie.* The Tax Court, under the dicta of *Marjorie F. Birnie,* looks to the facts and circumstances of each particular case to determine whether there was sufficient prejudice upon the petitioner to nullify the notice. In this respect they decide the ultimate question of fact and such decision determines the taxpayer's right to litigate in the Tax Court. It is apparent that if the taxpayer recognizes the notice and files a timely petition, he allows the court to apply the two most extreme alternatives. The court may either adjudicate the case on the merits or hold that the Commissioner cannot recover the tax because of improper assessment procedure.

A large amount of litigation, concerns cases in which the taxpayer failed to file a petition within ninety days after the mailing of the alleged defective notice of deficiency. Historically, this situation involves motions to dismiss on the part of both parties for lack of jurisdiction. The Commissioner alleges that the petition was not filed within the ninety day limit, and the taxpayer alleges that a proper assessment has never been made, therefore, no case or controversy exists.[22]

The general rule arising from these cases is that the Tax Court must deny the motion and state the reason therefor.[23] If the dismissal is entered on the motion of the Commissioner, then he is free to collect the tax. If the motion of the taxpayer is sustained, the Commissioner is denied the assessment in that particular case, and is forced to start the assessment process anew.

[20] 9 T.C. 681 (1947).
[21] 16 T.C. 681 (1951).
[22] Maxfield v. Commissioner, 153 F.2d 325 (9th Cir. 1946); Rosewood Hotel, Inc. v. Commissioner, 275 F.2d 786 (9th Cir. 1960); Abraham Goldstein, 22 T.C. 1233 (1954).
[23] Rosewood Hotel, Inc. v. Commissioner, 275 F.2d 786, (9th Cir. 1960); D'Andrea v. Commissioner, 263 F.2d 904 (D.C. Cir. 1959).

As a third alternative, when faced with a questionable notice of deficiency, the taxpayer may initiate a suit in Federal District Court to enjoin collection of the tax. This was done successfully, for example, in the case of *Barack v. United States*.[24] In using this alternative, the taxpayer waits for the attempted assessment on the part of the Commissioner, and thereby foregoes possible Tax Court litigation on the merits.

The taxpayer, therefore, when served with an improper notice, has three rather unattractive alternatives. The relative merits and pitfalls of the three should be given close consideration before the decision is made to file a petition to the Tax Court.

LAST KNOWN ADDRESS-IMPUTATION OF KNOWLEDGE TO COMMISSIONER

Section 6212(b)(1) provides that a notice of a deficiency of income and gift taxes mailed to the taxpayer at his last known address is sufficient, even though the taxpayer is deceased, or is under a legal disability, or in the case of a corporation, has terminated its existence. A similar provision is in effect for estate taxes.[25]

Through the years, there have been infinite problems in defending "last known address." The cases are reasonably uniform in holding that the last known address is that address which is given to responsible agents of the Commissioner. This point was adjudicated early in the history of our tax litigation in the case of *Welch v. Schweitzer*.[26] There, a taxpayer changed his address after his return was filed. The agent called on him at his new address and reported to his supervisors that the taxpayer had changed addresses. The agent filed other reports, one of which was mailed directly to the Commissioner. Nevertheless a notice was sent to the former address. The court held for the taxpayer in that instance, and ruled that the Commissioner should have knowledge of the new address.

In *Maxfield v. Commissioner*,[27] the Ninth Circuit held that the knowledge of the field agent would prevail over the fact that a taxpayer used another address on her returns and on a protest filed by her. They affirmed the rule of *Welch v. Schweitzer*, by holding that the knowledge of the Commissioner's agents or business organization is attributable to the Commissioner. To the same effect are the cases of *Barack v. United States*,[28] and *Gennaro A. Carbone*.[29]

[24] No. 10394(1), E.D. Mo., Oct. 11, 1956, 51 Am. Fed. Tax R. 1350; Shanghai Realty Dev. Co. v. Harrington, Civil No. 58983, D.C., Jan. 21, 1958, 1 Am. Fed. Tax R.2d 1159.

[25] INT. REV. CODE OF 1954, § 6212(b)(3).

[26] 106 F.2d 885 (9th Cir. 1939); *accord*, Luhring v. Glotzback, 304 F.2d 556 (4th Cir. 1962).

[27] 153 F.2d 325 (9th Cir. 1946).

[28] No. 10394(1), E.D. Mo., Oct. 11, 1956, 51 Am. Fed. Tax R. 1350.

[29] 8 T.C. 207 (1947).

Considerable difficulty ensues when there is attempted notification of the Commissioner by any source other than by direct and actual knowledge of his field agents.[30] Mere letters of correspondence to the Commissioner have proved to be a completely inadequate means of notifying the Commissioner of a change in address. The following methods have been questioned in our courts, and have been deemed to have given ineffective notice to the Commissioner of such change:

1. The filing in a new district of returns for subsequent years, paying the same type of tax, specifically stating that there is a new address and referring to the former district in which prior years' returns were filed.[31]

2. Direct letters to the Commissioner or his agent in reference to another type of tax, informing the Commissioner or his agent of a change in address.[32]

3. The filing of affidavits in connection with the tax under litigation, stating that the taxpayer now has a new address.[33]

4. A request for extension of time in connection with the tax under litigation, such request being made specifically for the reason that the taxpayer has moved to a new address.[34]

5. The filing with the Commissioner of a protest giving the new address of the taxpayer.[35]

6. The listing of the new address in the telephone directory.[36]

7. Seizure by a communist country of the territory which was reported as the address of the taxpayer on his latest income tax return.[37]

On the other hand, the following have been considered by the courts to indicate that *sufficient* notice has been given to the Commissioner:

1. The filing of returns for other types of tax with the same District Director.[38]

2. The filing in the same district, of returns for subsequent years, giving the new address.[39]

3. The statement of the new address on waivers extending the time in which the District Director may assess, such waivers being filed in the same district as the tax under litigation.[40]

[30] Joseph Marcus, 12 T.C. 1071 (1949).

[31] Joseph Marcus, *supra.* note 30; Clark's Estate v. Commissioner, 173 F.2d 13 (2d Cir. 1949); Luhring v. Glotzbach, 304 F.2d 560 (4th Cir. 1962).

[32] Commissioner v. Rosenheim, 132 F.2d 677 (3d Cir. 1942); Clark's Estate v. Commissioner, *supra* note 31.

[33] Clark's Estate v. Commissioner, 173 F.2d 13 (2d Cir. 1949).

[34] *Ibid.*

[35] *Ibid.*

[36] George F. Hurd, 9 T.C. 681 (1947).

[37] Shanghai Realty Dev. Co. v. Harrintgon, Civil No. 58983, D.C. Jan. 21, 1958, 1 Am. Fed. Tax R.2d 1159.

[38] Slaven v. United States, 14132-WB, S.D. Cal., Oct. 21, 1952; 45 Am. Fed. Tax R. 1256.

[39] *Ibid.*

[40] Abraham Goldstein, 22 T.C. 1233 (1954).

It should be noted that in none of the cited cases have the courts adjudicated that proper notice was given when the instrument attempting to give notice was filed in a district other than that where the return for the year in question was filed. The filing of instruments in the same district, informing the Commissioner of a change in address, has been the only means which the courts have accepted other than direct knowledge on the part of the field agents. The weight of the case law in respect to attempted notification by documents is heavily in favor of the Commissioner. This writer believes, however, that with the introduction of new electronic data processing equipment, the courts might well limit the power of the Commissioner to ignore affidavits, tax returns, and other types of documents. It would seem reasonable to place a greater burden on the Commissioner in this respect. Cases of the future can be expected to amend the doctrine laid down in the *Marcus*, *Clark*, and *Hurd* decisions, due to the fact that the Commissioner now has new means with which to discover the true identity and last address of the taxpayer.

POWERS OF ATTORNEY

In numerous instances, the authority of the Commissioner to assess the tax has depended upon the validity of a power of attorney as a means of notifying the Commissioner of a change in address. One of the earliest decisions regarding the power of attorney was *Bert D. Parker*.[41] In that case, the power of attorney directed all correspondence, documents, warrants, or other data connected in any way with the income tax, to be sent in care of the attorney. The deficiency notice in question was sent to the personal address of the taxpayer, which was also recited in the power of attorney. A mere copy of the notice was sent to the attorney. The taxpayer filed a petition in the Tax Court challenging the validity of the deficiency notice. Ruling on extremely narrow grounds in the case, the court seemingly overlooked all principles of agency, and held that the words "his last known address" as used in the statute[42] meant exactly what they said. They ignored the finding that various agents of the Treasury Department had previously used the attorney's address in lieu of the taxpayer's, and ruled that since the power of attorney did not explicitly state notices of deficiencies must be addressed to the attorney the Commissioner could not be required to send notice to his address. The court felt that actual receipt of the registered letter by the taxpayer was very important, and followed the theory that if a notice is received in due process of mailing, even though wrongfully addressed, it is effective.

In 1958, in the case of *United States v. Williams*,[43] an Ohio

[41] 12 T.C. 1079 (1949).
[42] INT. REV. CODE OF 1939, § 272(k).
[43] 164 F.Supp. 874 (S.D. Ohio 1958).

District Court ruled directly contra to the *Parker* case. There the decedent had filed a power of attorney with the District Director, directing *all communications* relative to tax matters be mailed to his counsel. When the Commissioner sent a ninety day letter to the attorney, and made a subsequent assessment, the executrix disallowed the claim, contending that the notice had not been sent to the decedent's last known address. The court ruled that the Commissioner was correct in using the address of the attorney, which was made mandatory by the power. This reasoning has been substantiated by *D'Andrea v. Commissioner*,[44] a very recent decision in the D. C. Circuit. In *D'Andrea*, the Commissioner sent a notice of deficiency by registered mail to the taxpayer, and a *copy* to the taxpayer's attorney. The registered letter was not delivered to the taxpayer, but was returned to the Commissioner. The Commissioner filed a motion to dismiss a subsequent Tax Court petition, on ground that the petition was untimely filed and contending that, even though not actually received, the notice of deficiency was valid since it was sent to the taxpayer's last known address. The power, virtually identical to that filed in the *Parker* case, recited the taxpayer's own home address, and then directed *all correspondence, documents, warrants, or other data* in connection with the tax under litigation be sent in care of the attorney. The court concluded that the registered letter sent to the petitioner was not sent to the last known address and that the letter sent to the attorney was insufficient since it was sent by ordinary mail. The court made it clear that they were refuting the *Parker* reasoning by stating: "This instrument begins with the petitioner's then present address, and closes with the clear designation of a new one. The latter was thereafter the address last known to the Commissioner." A very recent case in the Eighth Circuit has applied the *Williams* and *D'Andrea* reasoning.[45]

The discussion of the *Williams, Parker* and *D'Andrea* decisions involves powers of attorney in which the power explicitly states that all correspondence is to be mailed to the attorney. There has been considerable litigation relative to powers of attorney which did *not* direct that all correspondence be addressed to counsel.

In *Clement Brzezinski*,[46] the taxpayer communicated with the Commissioner requesting a *copy* of all communications be addressed to his attorney. The Commissioner sent the ninety day letter by registered mail to the attorney. The court found as an ultimate fact that the last known address was the personal residence of the petitioners, and the Commissioner was not authorized to send the notice to the attorney. However, the decision was for

[44] 263 F.2d 904 (D.C. Cir. 1959).

[45] Kisting v. Commissioner, 298 F.2d 264 (8th Cir. 1962).

[46] 23 T.C. 192 (1954).

the Commissioner for the notice was received in due course of mailing.

A somewhat novel approach to the authority of a power of attorney occurred in the case of *Estate of George F. Hurd.*[47] The executrix there had filed a power of attorney naming a law firm, but failing to direct that all correspondence be addressed to the firm. *No other address* was given on the power of attorney except that of the law firm. The court held that the Commissioner was not bound to use the address of the attorneys, even though it was the only one given on the power. This disagrees, to some extent, with the *Parker* decision which was based solely on conflict of addresses within the power.

One might expect the courts in the future to take greater notice of powers of attorney which direct that all correspondence be sent to the taxpayer's counsel. Recent cases indicate that the Commissioner *must* use this address for notices of deficiency. In cases which do *not* direct that all correspondence be sent to the attorney, the Commissioner will continue to have a reasonable choice as to whether he mails the notice to the taxpayer or his counsel.

It is anticipated by this writer that, as the methods of the Internal Revenue Service become more mechanized, the problems in regard to the ninety day letter will decrease. At the present time, however, they present questions of vital importance to a taxpayer facing the assessment of tax.

[47] George F. Hurd, 9 T.C. 681 (1947).