

which, unfortunately, the Tax Division did not attend,¹ Mr. Koss argued that the Felthaus' Declaration merely supports the existence of a fact issue regarding the timeliness of notice. The court disagrees and will enter summary judgment in the government's favor.

The Tax Code gives the IRS sixty days in which to notify the taxpayer, by mail, that an assessment has been made. 26 U.S.C. § 6303 (a). Despite the IRS' Certificate of Assessments and Payments indicating that it sent notice to the Kosses on the same day it made the assessment for Tax Year 1974, the Kosses maintained that they did not receive that notice. As the February 4, 1998 Memorandum stated, the determinative issue is not whether the Kosses received notice, but whether the IRS mailed it to them. See United States v. Zolla, 724 F.2d 808, 810 (9th Cir. 1984); Pursifull v. United States, 849 F.Supp. 597, 601 (S.D. Ohio 1993)). The Certificate of Assessments and Payments creates a strong presumption that the IRS did provide notice. United States v. Carson, 741 F.Supp. 92, 94 (E.D. Pa. 1990).

To rebut this presumption, the Kosses points to discrepancies in the Certificate itself. In Reply, the IRS relies upon the Declaration of Charles Felthaus, who certified

¹ The Tax Division Attorney telephoned from Washington, D.C. at 9:00 yesterday morning to inform the court that she was ill and could not attend the 9:30 a.m. hearing.

the Certificate of Assessments. The court finds that Felthaus' Declaration resolves any discrepancies in the Certificate. In addition, Felthaus attaches and discusses the IRS Individual Master File for the Kosses' 1974 tax liability, and this document also states that notice of the assessment was posted to the Kosses on July 19, 1990.

Based on the entire record, the court finds that the Kosses cannot rebut the presumption of timeliness and therefore have not established the existence of a factual issue regarding notice. Accordingly summary judgment will be entered for the government.

An order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID A. KOSS and : CIVIL ACTION
FREYA B. KOSS, :
 :
 Plaintiffs, : NO. 97-440
 :
 :
 v. :
 :
 :
 UNITED STATES OF AMERICA, :
 Defendant. :

O R D E R

AND NOW, this 18th day of February, 1998, upon consideration of the entire record, including "Defendant's Reply to Plaintiff's Opposition to Its Motion to Dismiss" (Dkt. # 8), which will be construed as a Memorandum in support of Summary Judgment; and, Plaintiffs' Supplemental Affidavit (Dkt. # 9), it is hereby **ORDERED** that the Motion for Summary Judgment is **GRANTED**, in accordance with the accompanying Memorandum.

Judgment is entered in favor of the United States of America and against the plaintiffs David A. Koss and Freya B. Koss. The Clerk shall mark this case **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.

