**Scene 4**

**Narrator:** Now we move to the U.S. Tax Court, Center Courtroom. In this scene, Ms. Jessie Smith, tax counsel to the Governor of Virginia, Ms. Lauren Charles, is appearing in front of the Honorable Judge Bernie Dandy of the U.S. Tax Court, on the IRS’ Motion to Dismiss Gov. Charles Petition, filed a few days beyond 90-days. Ms. Smith is arguing that the IRS did not exercise due diligence when it failed to mail a duplicate copy of the Notice of Deficiency for Governor Charles’ 2016 tax year to her at the Governor’s Mansion in Richmond, Virginia, but rather, only sent the Notice of Deficiency to her prior home address, meaning either (i) that the Notice was never effectively received, until very recently, so was timely filed or, (ii) if it was not, the fault was that of the government so the Petition should still be treated as timely filed.

**Clerk:**  All rise.

**Dandy:** Good morning. Will you call the docket?

**Clerk:** Now calling Docket 03115-18, *Lauren Charles versus Commissioner of Internal Revenue*.

**Smith:** Good morning, Your Honor. Jesse Smith on behalf of Governor Lauren Charles.

**Respondent:**  Good morning, Your Honor. Megan Bailey, on behalf of the Government.

**J. Dandy**: We’ll hear from Ms. Baily first, on behalf of the Respondent, on its Motion to Dismiss.

**Ms. Baily, for Respondent:**  The IRS mailed the 2016 IRS Notice of Deficiency, dated April 25, 2018, to Gov. Charles’ last known address on record with the IRS. Ms. Charles filed her 2016 tax return using the address as follows: Penthouse Suite, Vista View Condominium, McLean, Virginia 22182. The IRS has no additional information with respect to a new address for Ms. Charles. She failed to notify the IRS of her change of address. As such, the IRS properly mailed the notice of deficiency to the last known address on record. The Governor’s Petition to this Court filed, August 5, 2018, must be dismissed as untimely, being filed after 90-days had passed from the date of the Notice.

J. Dandy: Ms. Smith, how do you respond to this, for your client Gov. Charles?

**Ms. Smith, for Gov. Charles, the Petitioner:**  Your Honor, we agree that the matter at issue today is a jurisdictional one. But the Petition must be treated as timely, as the Governor only received it in early August. The IRS mailed the notice of deficiency for the 2016 tax year to Governor Charles at her former residence in McLean Virginia. However, by the time it did so, the Governor had moved, to Richmond, month’s earlier. She only received the Petition in early August, from my office, and we only received it, from someone, we are not sure who, only in late July. Either way, her Petition is timely. In this regard, as everyone knows, after a very public campaign, reported on a national level, Governor Charles was elected in November 2017, and moved into the Virginia Governor’s Mansion in Richmond, Virginia, in January 2018. More than 6 months later, in July 2018, after concluding an examination of her 2016 tax return, the IRS issued a notice of deficiency on April 25, 2018. However, the Service failed to mail it to her at the Governor’s Mansion, her new address, as it should have done, as the Service was on notice, by the time the Notice of Deficiency was issued, that she had moved to Richmond, at the time of her Gubernatorial inauguration, in January, 2018.

Under the *Abeles* case, as you know, a Taxpayer’s last known address is that address which appears on the taxpayer’s most recently filed return, *unless* respondent has been given clear and concise notification of a different address. The IRS’s notice of deficiency will be treated as invalid if it is not sent out to the proper address. .

Here, the government had that clear and concise notice, of her new address. How? Everyone in Virginia, and most of the nation, knew Ms. Charles became governor in January, 2018. It made national news. Each Virginia governor has lived at the Virginia Governor’s Mansion in Richmond Virginia since 1813! She had obviously moved into the Mansion so she could more effectively and efficiently run the busy Commonwealth!

The Affidavit from the Governor, attached to her Opposition to the Motion to Dismiss, says her first knowledge of the Notice of Deficiency came from me, in very late July, in a phone call, and that she did not physically receive the Notice until just a week or so ago, in early August. Her Petition must be treated as timely filed. Alternatively, the IRS is estopped from claiming to the contrary as any delay was caused by its failure to properly deliver the Notice of Assessment to the Governor in the first place, as it should have been sent to her both at her former McLean, VA address, and also to her new address, in Richmond. She is always under audit and the audit team surely knew, like everyone else in Virginia, and most of America, that she had become Governor and moved to Richmond in January, 2018, at the time of her Gubernatorial inaugural.

**Ms. Baily, for Respondent:** The standard has been established--it is the responsibility of the taxpayer to provide “clear and concise” notification to the IRS of a different address. Petitioner has failed to show that any effort was made by Ms. Charles to provide such a “clear and concise” notification to the Governor of her new Richmond address. There is no letter to the Service, or anyone else, formally advising of her new address in Richmond. Furthermore, petitioner has also failed to show that she did not actually receive the notice of deficiency in sufficient time to file a petition with the Tax Court, on or before July 24, 2018, 90-days from its date. This Petition was not timely and must be dismissed.

**J. Dandy**: Did Ms. Charles have knowledge that an IRS notice of deficiency had been received?

**Ms. Smith, for Gov**: Governor Charles is very busy running the Commonwealth of Virginia, as well as her highly successful medical practice. As such, she relies on her business advisors to handle many of her personal and other business affairs. Ms. Flanders, her business advisor, has no clear recollection of receiving the notice of deficiency at the McLean residence. The notice of deficiency was forwarded to my law office from the governor’s McLean residence by an unknown sender, very late in July. But Your Honor, Governor Charles herself never heard of the notice until I phoned her about it, very late in July, and never even saw the Notice until early August, 2018. So, the Petition must be treated as timely, as it was never effectively delivered to her before then.

**J. Dandy:**  Were any additional tax returns or informational returns filed with the IRS after Ms. Charles’ 2016 tax return was filed in 2017? What address was used on Ms. Charles’ 2017 tax return, or her extension, filed in 2018?

**Smith:** As for Governor Charles’ 2017 filings with the IRS, at the end of 2017, being busy with many affairs of state, she, and her assistant Ms. Flanders, apparently forgot to file a formal request for an automatic extension. Until, just recently, early August, 2018, asking for a further 60-day extension until Oct. 15, 2018.

**J. Dandy**: Anything further, Ms. Bailey?

**Bailey:** Your Honor, Respondent says, again, that the IRS administrative file shows no indication that a change of address notification was received and that Ms. Charles’ address in McLean, Virginia was no longer to be used. The IRS examination team did not meet at the Governor’s mansion--they prefer to do examinations by phone in the comfort of their homes. Additionally, there is no indication that the IRS examination team was aware that Ms. Charles, the taxpayer, and Ms. Charles, the governor of Virginia, were one and the same. Moreover, since the Notice of Deficiency was mailed to Ms. Smith from McLean, someone in McLean got it, and presumably well before 90-days from its date, April 25, 2018. This Petition must be dismissed.

**J. Dandy**: I will take this matter under advisement. Thank you, counsel.