

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

BARRY LEONARD BULAKITES,)	
)	
Petitioner,)	
)	
v.)	Docket Nos.16719-14,
)	16878-14.
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	
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)	

ORDER

On September 10, 2014, respondent filed in the case at Docket No. 16878-14 a Motion To Close on Ground of Duplication, explaining that the matter was a duplicate of the case at Docket No. 16719-14.

The records in these proceedings shows that on April 17, 2014, respondent issued a notice of deficiency to petitioner for the taxable years 2011 and 2012. Subsequently, petitioner sent to the Court two separate but identical petitions seeking to dispute the April 17, 2014, notice. One was sent by FedEx First Overnight with a ship date of July 16, 2014. That petition was received and filed by the Court on July 17, 2014, to commence the case assigned Docket No. 16719-14. The other was sent by certified mail, with a U.S. Postal Service postmark also dated July 16, 2014. That petition was received and filed by the Court on July 21, 2014, to commence the case assigned Docket No. 16878-14.

In a case seeking the redetermination of a deficiency, the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Brown v. Commissioner, 78 T.C. 215, 220 (1982). In this regard, section 6213(a) of the Internal Revenue Code (I.R.C.) provides that the petition must be filed with the Court within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day). However, if the conditions of section 7502, I.R.C., are satisfied, a petition which is timely mailed may be treated as having been timely filed. As pertinent here, proof of certified mailing or shipment by a designated private delivery service (PDS) affords protection under the timely mailing rules of section 7502, I.R.C. Regarding a

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designated PDS, the regulations and additional administrative guidance treat the date of delivery to the PDS, as recorded in the PDS's electronic database or marked by the PDS on the item's cover, as the equivalent to proof of registered or certified mailing. Sec. 301.7502-1(c)(3), (e)(2)(ii), *Proced. & Admin. Regs.*; Notice 97-26, 1997-1 C.B. 413, as modified by Notice 2002-62, 2002-2 C.B. 574.

In the instant scenario, the deadline for filing a petition with respect to the April 17, 2014, notice of deficiency expired on July 16, 2014. The petition at Docket No. 16878-14, postmarked by the U.S. Postal Service and sent by certified mail, clearly falls within the protective parameters of section 7502, I.R.C. Concerning the petition at Docket No. 16719-14, the Court would observe that while certain forms of FedEx delivery have been incorporated on the list promulgated by the Internal Revenue Service as a designated PDS, "FedEx First Overnight" is not presently so listed. See Notice 2004-83, 2004-2 C.B. 1030.

Hence, upon due consideration of the records in the proceedings at Docket Nos. 16719-14 and 16878-14 and to afford petitioner the greatest protection under section 7502, I.R.C., it appearing that these cases are duplicative, it is

ORDERED that respondent's Motion To Close on Ground of Duplication, filed September 10, 2014, at Docket No. 16878-14, is denied. It is further

ORDERED that the case at Docket No. 16719-14 is closed on the ground of duplication. It is further

ORDERED that respondent shall file an answer to the petition at Docket No. 16878-14 on or before November 24, 2014.

(Signed) Michael B. Thornton
Chief Judge

Dated: Washington, D.C.
September 23, 2014