

UNITED STATES TAX COURT
WASHINGTON, DC 20217

TARA E. LEWIS,)
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 Petitioner,)
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 v.) Docket No. 14393-14.
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 COMMISSIONER OF INTERNAL REVENUE,)
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 Respondent)
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ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On August 13, 2014, respondent filed in the above-docketed case a Motion To Dismiss for Lack of Jurisdiction, on the ground that the petition was not filed within the time prescribed by section 6213(a) or 7502 of the Internal Revenue Code (I.R.C.). A first supplement to the motion followed on October 2, 2014. Respondent attached to the motion and supplement copies of a certified mail list as evidence of the fact that notices of deficiency for the taxable years 2010 and 2011 were sent to petitioner by certified mail on March 17, 2014.

The petition was filed with the Court on June 19, 2014, which date is 94 days after the notices of deficiency for tax years 2010 and 2011 were mailed to petitioner. The petition was received by the Court via FedEx Express Saver in an envelope that bears a user-generated handwritten airbill dated June 16, 2014, and a FedEx-generated sticker label bearing a ship date of June 17, 2014. June 17, 2014, is 92 days after the mailing of the notices of deficiency to petitioner, and June 16, 2014, is 91 days after the mailing of the notices.

This Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). 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), 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).

The Court has no authority to extend this 90-day (or 150-day) period. Joannou v. Commissioner, 33 T.C. 868, 869 (1960). 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.

In the present case, the time for filing a petition with this Court expired on June 16, 2014, as the 90th day, June 15, 2014, was a Sunday. However, the petition was not filed within that period.

Petitioner was served with a copy of respondent's motion to dismiss and, on September 8, 2014, filed a notice of objection. Therein, petitioner explained, and attached documentation showing, that she had faxed the petition and information to the Internal Revenue Service (IRS) on the June 16, 2014, and that she had also paid for and sent the petition by FedEx to the Court on the same date. Petitioner further noted that she had been unaware that the FedEx label would not reflect June 16, insofar as she had been advised by a FedEx employee that June 16 would be the mailing date. The objection closed by reprising petitioner's difficult personal and financial circumstances and serious medical condition and by entreating the Court to grant relief in this hardship scenario.

Although the Court is sympathetic to petitioner's situation, section 7502, I.R.C., governs the procedures under which a petition that is mailed on or before the expiration of the statutory filing period is treated as having been timely filed. The statute applies to documents sent by U.S. mail and to documents sent by private delivery services that have been explicitly designated by the Government for that purpose. Sec. 7502(a), (f), I.R.C. Critically, however, and as relevant here, while certain forms of FedEx delivery have been so designated, FedEx Express Saver is not one of the private delivery services recognized under section 7502, I.R.C. See Notice 2004-83, 2004-2 C.B. 1030. Thus, the discrepancy between the June 16 and June 17 dates is in fact immaterial in these circumstances, as even a FedEx-generated June 16 label would be insufficient to comply with section 7502, I.R.C., if the item is sent by FedEx Express Saver.

Nonetheless, for completeness, it may be noted that section 7502, I.R.C., and administrative rules promulgated thereunder also address label discrepancies of nature seen here. Relevant law places the burden and risk on the taxpayer to establish timely mailing for purposes of section 7502, I.R.C., not on the Commissioner to show untimeliness. See sec. 301.7502-1(c)(1)(iii)(A), *Proced. & Admin. Regs.* Regulations set forth a framework for evaluating particular mailing scenarios, as follows. First, regulations provide that if an envelope bears a legible U.S. Postal Service postmark, that mark is considered conclusive absent proof of registered or certified mailing, or shipment by a designated private delivery service (PDS), on a contrary date, "regardless of when the document or payment is deposited in the mail". Sec. 301.7502-1(c)(1)(iii), (2), (3), *Proced. & Admin. Regs.*

The exception for registered or certified mail, or shipment by a designated PDS, is likewise further elucidated by regulations. As to certified or registered mail, the regulations specify that the date of registration of a document or the date "postmarked by the postal employee to whom the document * * * is presented" on the sender's certified mail receipt "is treated as the postmark date of the document" and will thus eliminate the risk of an untimely postmark on an envelope. Sec. 301.7502-1(c)(2), *Proced. & Admin. Regs.*; see also sec.

301.7502-1(e)(2)(i), Proced. & Admin. Regs. As to a 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.

More specifically, Notice 97-26, 1997-1 C.B. at 414, states in pertinent part:

SPECIAL RULES FOR DETERMINING POSTMARK DATE: Section 7502(f)(2)(C) requires a PDS to either (1) record electronically to its data base (kept in the regular course of its business) the date on which an item was given to the PDS for delivery or (2) mark on the cover of the item the date on which an item was given to the PDS for delivery. Under § 7502(f)(1), the date recorded or the date marked under § 7502(f)(2)(C) is treated as the postmark date for purposes of § 7502.

This notice provides rules for determining the date that is treated as the postmark date for purposes of § 7502. There is one set of rules for the designated PDSs that qualified for designation because their "postmark date" is recorded electronically to their data bases. There is another set of rules for the designated PDS that qualified for designation because its "postmark date" is marked on the cover of an item.

As applicable to items delivered by FedEx, Notice 97-26 , 1997-1 C.B . at 414, then provides even greater specificity, setting forth in relevant part:

An electronically generated label is applied to the cover of all items delivered by FedEx, including those items that already have an airbill attached. The date on which an item is given to FedEx for delivery is marked on the label. There are two types of labels (which are distinguishable from each other). One type of label is generated and applied to an item by a FedEx employee. The other type of label is generated (using computer software and/or hardware provided by FedEx) and applied to an item by a customer. The date that will be treated as the postmark date for purposes of § 7502 is determined under the following rules:

- (1) If an item has a label generated and applied by a FedEx employee, the, date marked on that label is treated as the postmark date for purposes of § 7502, regardless of whether the item also has a label generated and applied by the customer.

Alternatively, in absence of a U.S. Postal Service postmark or showing of delivery by a designated PDS, section 301.7502-1(c)(1)(iii)(B)(1), (2), Proced. & Admin. Regs., provides that if a document in a mailing envelope bearing a timely, legible postmark made other than by the U.S. Postal Service is received after the time when a document so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, the document is treated as having been received at the time when a document so mailed and so postmarked would ordinarily be received

if the person required to file the document establishes: (1) That the delay in receiving the document was due to a delay in transmission of the U.S. Mail; and (2) the cause of the delay. In the case of both a U.S. Postal Service postmark and a non-U.S. Postal Service mark, the U.S. Postal Service postmark controls, and the other is disregarded. Sec. 301.7502-1(c)(1)(iii)(B)(3), *Proced. & Admin. Regs.*

Here, the label placed by the FedEx employee on the petition envelope lists June 17, 2014, as the ship date. This Court has previously held in an analogous scenario that the date that a shipper notifies FedEx that he or she has an envelope for shipment cannot control over the FedEx label generated electronically by the FedEx employee. Austin v. Commissioner, T.C. Memo. 2007-11. Moreover, as the notice quoted above makes clear, whether the user-generated label is created electronically or by hand is not material. Hence, in accordance with the foregoing authorities, June 17, 2014, would presumably be treated as the “postmark” date for purposes of section 7502, I.R.C.

In addition, to the extent the objection shows that, in the periods following the issuance of the notice of deficiency, petitioner continued to communicate with and to seek to submit information in support of her claims to the IRS, her attempts to fax the petition to the IRS are likewise unavailing. The law is well settled that once a notice of deficiency has been issued, further administrative consideration does not alter or suspend the running of the 90- or 150-day period. Even confusing correspondence, written or verbal, during the administrative process cannot override the clearly stated deadline in the statutory notice of deficiency. Such confusion is not uncommon given that the IRS frequently treats as separate processes or proceedings what taxpayers view as a single dispute. Taxpayers not infrequently have also conflated this Court with an IRS unit, but the IRS is a completely separate and independent entity from the Tax Court.

Again, although section 7502, I.R.C., allows a timely mailed petition to be treated as timely filed, that section mandates that the envelope bearing the petition be “properly addressed to the agency, officer, or office with which the document is required to be filed.” Sec. 7502(a)(2)(B), I.R.C. A petition seeking redetermination of a deficiency must be filed with this Court and not the Internal Revenue Service. Sec. 6213(a), I.R.C. Hence, the mailing (or faxing) of a petition, or other documentation, to the Internal Revenue Service is not sufficient to confer jurisdiction on this Court. Axe v. Commissioner, 58 T.C. 256 (1972). The statute is clear, and this Court must follow it. Estate of Cerrito v. Commissioner, 73 T.C. 896 (1980). The Court would also note that a notice of deficiency issued to a taxpayer states on its face the last day to petition the Tax Court (not the IRS) and provides expressly in multiple places that the filing period extends 90 days from the date of the letter. The notice is likewise explicit in providing that petitions must be filed with the U.S. Tax Court and in giving the Court’s address as “400 Second Street, NW, Washington, DC 20217”.

Hence, while the Court is sympathetic to petitioner’s situation and understands the unintentional character of the inadvertence here, the serious health issues, and the good faith of petitioner’s efforts, the fundamental nature of the filing deadline precludes the case from going forward. As a Court of limited jurisdiction, the Court is unable to offer any remedy or assistance when a petition is filed late. Rather, the Court is barred from considering in any way petitioner’s

case or the correctness of her claims. Unfortunately, governing law recognizes no reasonable cause or other applicable exception to the statutory deadline.

The Court has no authority to extend that period provided by law for filing a petition “whatever the equities of a particular case may be and regardless of the cause for its not being filed within the required period.” Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, since petitioner has failed to establish that the petition was mailed to or filed with this Court within the required statutory period, this case must be dismissed for lack of jurisdiction.

The premises considered, it is

ORDERED that respondent’s Motion To Dismiss for Lack of Jurisdiction, as supplemented, is granted, and this case is dismissed for lack of jurisdiction.

(Signed) Michael B. Thornton
Chief Judge

ENTERED: **OCT 14 2014**