

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

ROBERT H. TILDEN,	)	
	)	
Petitioner,	)	<b>SYM</b>
	)	
v.	)	Docket No. 11089-15.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	

**ORDER**

On September 22, 2015, the Court filed and served its Memorandum Opinion as T.C. Memo. 2015-188. Therein the Court held that the petition was not timely mailed and was therefore not timely filed. Three days later, on September 25, 2015, the Court entered an Order Of Dismissal For Lack Of Jurisdiction granting respondent’s Motion To Dismiss For Lack Of Jurisdiction filed June 8, 2015, and dismissing this case on the ground that the petition was not timely filed.

On October 22, 2015, petitioner filed a Motion For Reconsideration Of Findings Or Opinion Pursuant to Rule 161<sup>1</sup> and represented therein that counsel for respondent objects to its granting. Thereafter, pursuant to the Court’s Order dated October 27, 2015, respondent filed a Response to petitioner’s motion on November 16, 2015. Surprisingly, respondent states in his Response that “respondent does not object to the Court’s granting petitioner’s motion for reconsideration of

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<sup>1</sup> Rule references are to the Tax Court Rules of Practice and Procedure. Rule 161 provides in relevant part that “Any motion for reconsideration of an opinion or findings of fact, with or without a new or further trial, shall be filed within 30 days after a written opinion \* \* \* [has] been served \* \* \* .” The Court’s other relevant Rule regarding post-trial proceedings is Rule 162, which provides that “Any motion to vacate or revise a decision, with or without a new or further trial, shall be filed within 30 days after the decision has been entered, unless the Court shall otherwise permit.”

findings or opinion pursuant to T.C. Rule 161 and denying respondent's motion to dismiss for lack of jurisdiction."<sup>2</sup>

The fact that respondent may now have lost confidence in his own motion is of no moment. After all, it is axiomatic that the Tax Court is a court of limited jurisdiction and that it may exercise jurisdiction only to the extent expressly authorized by statute. See I.R.C. sec. 7442; Breman v. Commissioner, 66 T.C. 61, 66 (1976). It is equally axiomatic that jurisdiction cannot be conferred on this Court by agreement of the parties. E.g., Dorn v. Commissioner, 119 T.C. 356, 357 (2002). Indeed, the Court can -- and should -- question its jurisdiction when there is reason to do so. Id. These principles are not new. E.g., Appeal of Mohawk Glove Corporation, 2 B.T.A. 1247 (1925) ("Although the Commissioner admitted in his answer the jurisdiction of the Board, we cannot take jurisdiction where it does not exist by statute."). In Kane v. Commissioner, T.C. Memo. 1989-272, the Court cited Mohawk Glove Corp. and stated as follows:

[N]o admission or agreement of the parties can confer jurisdiction on this Court where no jurisdiction exists. \* \* \* The Tax Court is a court of limited jurisdiction. Unless the statutory requirements conferring jurisdiction on the Court have been met, we lack jurisdiction over the case. This principle has been enunciated in numerous cases throughout the history of this Court and is too well-established to require citation of authority.

In addition to the foregoing principles regarding jurisdiction, the Court notes that respondent makes no reasoned argument in his Response to petitioner's motion why Boulton v. Commissioner, T.C. Memo. 2011-11, which is one of the lynchpins of the Court's Tilden opinion, is incorrect or why official records of the U.S. Postal Service in the form of USPS Tracking data should not serve as a postmark.

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<sup>2</sup> Respondent's position has evolved over the course of this case. Thus, in his Motion To Dismiss For Lack Of Jurisdiction filed June 8, 2015, respondent argued that the petition was not timely filed, and he relied on USPS Tracking data to demonstrate that the petition was not timely mailed. Then, after petitioner objected to the granting of his motion, respondent argued in his Reply filed July 21, 2015, that the petition did not arrive at the Court in the usual mailing time and that petitioner failed to demonstrate when the petition was actually deposited in the mail, that the delay in the receipt of the petition was due to a delay in the transmission of the mail, and the cause of the delay. See 301.7502-1(c)(1)(iii)(B)(2), Proced. & Admin. Regs. Now, in response to petitioner's motion for reconsideration, respondent reverses course and accepts petitioner's view that the petition was timely mailed and was therefore timely filed.

In his motion for reconsideration, petitioner makes no persuasive argument that Boulton v. Commissioner, T.C. Memo. 2011-11, has no application to the present case nor that official records of the U.S. Postal Service in the form of USPS Tracking data should not serve as a postmark.

Premises considered, it is hereby

ORDERED that petitioner's Motion For Reconsideration Of Findings Or Opinion Pursuant to Rule 161, filed October 22, 2015, is denied.

**(Signed) Robert N. Armen, Jr.  
Special Trial Judge**

Dated: Washington, D.C.  
December 3, 2015