

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

Ashley R. Kruse & Jeffery W. Kruse,)	
)	
Petitioners,)	
)	
v.)	Docket No. 7166-16S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On May 11, 2016, respondent filed a Motion To Dismiss for Lack of Jurisdiction. On May 31, 2016, respondent filed a First Supplement to his motion to dismiss. In his motion to dismiss, as supplemented, respondent seeks to dismiss this case for lack of jurisdiction on the ground the petition was not timely filed. On June 24, 2016, petitioners filed an Objection to respondent's motion to dismiss, as supplemented.

The record reflects that respondent mailed a notice of deficiency to petitioners for 2013 and 2014 on December 17, 2015. The 90-day period for filing a timely petition under I.R.C. section 6213(a) expired on March 16, 2016. The petition, filed March 22, 2016, arrived at the Court in an envelope bearing a U.S. Postal Service postmark dated March 17, 2016--one day beyond the 90-day filing period

In their Objection petitioners do not dispute the jurisdictional allegations set forth in respondent's motion to dismiss. Rather, petitioners assert/indicate that: (1) due to her pregnancy, Mrs. Kruse incorrectly calculated the last date to file a timely petition as to the deficiency notice issued to petitioners for 2013 and 2014 upon which this case is based; and (2) petitioners waited until the 90-day filing period expired in order to recover as much of their records as possible so as to better prepare their Tax Court case. Petitioners thus ask the Court not to dismiss this case. Contrary, to petitioners' argument, however, the deficiency notice for 2013 and 2014 (a copy of which is attached (a) to the petition, (b) as Exhibit A to respondent's motion to dismiss, filed on May 10, 2016, and (c) as Exhibit A to respondent's First Supplement, filed on May 31, 2016) states, inter alia:

If You Wish to Challenge This Determination

If you want to challenge this determination in court before making any payment, you have 90 days from the date of this letter (150 days if this letter is addressed to

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you outside of the United States) to file a petition with the United States Tax Court to reconsider the deficiency.

* * * * *

Time Limits on Filing a Petition

The time you have to file a petition in the Tax Court is set by law.

1. The petition is considered timely filed if the postmark date falls within the prescribed 90 or 150 day period and the envelope containing the petition is properly addressed with the correct postage.

2. The Tax Court cannot consider your case if your Tax Court petition is filed late. IRS cannot grant an extension or allow a suspension of the prescribed deadline, even for reasonable cause. Thus, contacting the Internal Revenue Service (IRS) for more information, or receiving other correspondence from the IRS won't change the allowable period for filing a petition with the Tax Court.

That deficiency notice also states that the last day to file a timely Tax Court petition as to that notice would be March 16, 2016.

As indicated above, the record reflects that the petition was not filed timely as to the December 17, 2015, deficiency notice issued to petitioners for 2013 and 2014 upon which this case is based. The Court has no authority to extend the time for filing a timely petition. Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, we are obliged to dismiss this case for lack of jurisdiction.

Petitioners cannot prosecute a case in this Court. However, petitioners may continue to pursue administrative resolution of their 2013 and 2014 tax liability directly with the Internal Revenue Service. If financially feasible for them, petitioners further may pay the tax, file a claim for refund with the Internal Revenue Service, and if the claim is denied, sue for a refund in the Federal district court or the U.S. Court of Federal Claims. See McCormick v. Commissioner, 55 T.C. 138, 142 (1970).

Upon due consideration, 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) L. Paige Marvel
Chief Judge**

ENTERED: **JUN 27 2016**