

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Marion I. Tanner Trust Dated 03/28/2002, Rita A.))	
Wilson, Trustee,))	
)	
Petitioner,))	
)	
v.))	Docket No. 13446-16S.
)	
COMMISSIONER OF INTERNAL REVENUE,))	
)	
Respondent.))	

ORDER

On July 25, 2016, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground the petition was not timely filed. In his motion to dismiss respondent asserts/states, inter alia:

2. The 90-day period for timely filing a petition with this Court from the notice of deficiency expired on June 5, 2016. June 5, 2016, was a Sunday, so the [90-day period for filing a timely Tax Court petition as to that] notice of deficiency expired on June 6, 2016.

3. The petition was filed with the Tax Court on June 8, 2016, which date is 93 days after the mailing of the notice of deficiency and 2 days after the expiration of the notice of deficiency.

4. The copy of the petition served upon Respondent bears no U.S. Postmark on the cover in which the petition was mailed to the Tax Court. There is a U.S. Postmeter stamped on the cover which reads "JUN 01 2016."

5. The irradiation process for mail sent to the United States Tax Court is approximately 7 days.

6. The petition was not filed with the Court within the time prescribed by I.R.C. § 6213(a) or § 7502.

Respondent further asserts that petitioner has not established that Rita A. Wilson is the duly appointed trustee of the trust in accordance with Tax Court Rule 60(c).

SERVED Jul 28 2016

Respondent's above assertion that the petition was untimely filed appears contrary to section 301.7502(c)(1)(iii)(B), Proc. & Admin. Regs., which provides, in pertinent part:

(B) Postmark made by other than U.S. Postal Service.

(1) In general. If the postmark on the envelope is made other than by the U.S. Postal Service-

(i) The Postmark so made must bear a legible date on or before the last date, or the last day of the period, for filing the document * * *; and

(ii) The document * * * must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document * * * contained in an envelope that is properly addressed, mailed, and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date, or last day of the period, prescribed for filing the document.

As to respondent's above assertion concerning Rita A. Wilson's capacity as trustee, the deficiency notice upon which this case is based was issued and addressed to "Marion I Tanner Tr Dated 3-28-2002, Rita A. Wilson TTEE"

Upon due consideration, it is

ORDERED that, on or before August 18, 2016, respondent shall file a First Supplement to his motion to dismiss. In that Supplement respondent shall set forth and discuss fully respondent's position as to both (1) whether the petition in this case was filed timely in light of section 301.7502(c)(1)(iii)(B) of the regulations, and (2) based upon a diligent and good-faith search conducted by respondent, whether Rita A. Wilson is the duly appointed trustee of the trust.

**(Signed) L. Paige Marvel
Chief Judge**

Dated: Washington, D.C.
July 27, 2016