

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

MELVYN DUANE SALTER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 21045-15 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

The Court has received from petitioner Melvyn Duane Salter a letter that we will treat as a notice of appeal.

**Background**

This case was called from the calendar at the Court's trial session in Columbia, South Carolina, on October 17, 2016. At the calendar call, the Court engaged in the following colloquy with Mr. Salter (Tr. 11-12, emphasis added):

MR. SALTER: In the event that I don't agree with any decision that's made today, will I have the right to appeal?

THE COURT: You have the right to appeal that when I enter a decision.

MR. SALTER: Correct.

THE COURT: There's a document that will end this case called Decision, and if it were entered against you, it would be in the nature of saying that I uphold the notice of determination that was issued by the IRS about this, that and the other thing, and then my signature is on there. That would be the document that is the judgment against you that you could then appeal.

**SERVED Aug 15 2017**

MR. SALTER: And would I be directed or informed where to get the correct document to appeal that by the Court?

THE COURT: I think that the document that you would want to file is a notice of appeal, and I believe that a form for the notice of appeal may appear in our rules, but it's a document that is filed with this court.

MR. SALTER: Yes.

THE COURT: Even though you're appealing to the Fourth Circuit, you file your notice of appeal with this court.

MR. SALTER: Yes.

A form "Notice of Appeal to Court of Appeals" does indeed appear in the Rules of Practice and Procedure of the United States Tax Court, as Form 17 in "Appendix I", accessible at [http://ustcintranet/rules/Appendix\\_I.pdf](http://ustcintranet/rules/Appendix_I.pdf).

Trial took place later that day. We then read a bench opinion on October 19, 2016. On November 3, 2016, we served copies of the transcript of the bench opinion on the parties and entered our Decision.

On August 1, 2017, Mr. Salter mailed to the Court a 10-page letter (dated July 31, 2017) that includes the sentence "I, Melvyn Duane Salter, Hereby Appeal the Decision and Order Granted to the IRS Commissioner..." The letter states (emphasis added):

Upon being called to the stand, I asked you ahead of time Could I appeal any decision you made and you answered yes. I then asked where I could find the form to make the appeal and you answered it was some where on the IRS website but I have yet to find it.

Mr. Salter evidently misunderstood or misremembered the Court's reference to the Court's rules.

### Discussion

Pending before us now is the question of how to characterize Mr. Salter's letter. We construe it to be a notice of appeal. See Feistman v. Commissioner, 587 F.2d 941, 942 (1978) ("We treat taxpayers' request to transmit the record to this

court as a notice of appeal: taxpayers are proceeding Pro se, and their request clearly evinced an intent to appeal. Under such circumstances, we construe an appellant's filing liberally").

As a notice of appeal, his letter would appear to be untimely. Pursuant to I.R.C. section 7483, a notice of appeal would have been due to be filed in Mr. Salter's case "within 90 days after the decision of the Tax Court is entered"-- i.e., on February 1, 2017. See also Tax Court Rule 190(a). No notice of appeal was filed by that time. Rather, Mr. Salter's letter was mailed 6 months later. However, it will be for the Court of Appeals to decide the timeliness of Mr. Salter's appeal. We simply discern that the recent filing "clearly evinced an intent to appeal", as in Feistman.

It is therefore

ORDERED that the Clerk of the Court shall file, as of the date received, Mr. Salter's letter as petitioner's notice of appeal.

**(Signed) David Gustafson  
Judge**

Dated: Washington, D.C.  
August 15, 2017