

UNITED STATES TAX COURT
WASHINGTON, DC 20217

| | | |
|-----------------------------------|---|------------------------|
| RAMON MATTA & JACKLYN MATTA, |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Docket No. 23413-16SL. |
| |) | |
| COMMISSIONER OF INTERNAL REVENUE, |) | |
| |) | |
| Respondent |) | |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | |

SR

ORDER AND ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On August 22, 2017, the Court served on the parties an Order To Show Cause, dated August 21, 2017. The Order To Show Cause directed the parties to show cause, in writing, on or before September 11, 2017, why this case should not be dismissed for lack of jurisdiction on the ground that the petition was not filed within the time prescribed by I.R.C. section 6330(d) or 7502. Petitioners have not responded to the Order To Show Cause. In contrast, respondent filed a Response on September 8, 2017, essentially arguing that the mailing date of the duplicate original notices of determination was September 13, 2016 (rather than September 12, 2016), thereby making the mailing of the petition on October 13, 2016, timely.

The operative facts are as follows:

Respondent’s Appeals Office in Holtsville, New York, sent by certified mail a duplicate original notice of determination to each petitioner in respect of the taxable (calendar) year 2012. The “Summary of Determination” on each duplicate original notice of determination states that “The Notice of Intent to Levy is not sustained.” (Emphasis added.) The Attachment to each duplicate original notice of determination states, in part, as follows:

The determination of Appeals is:

It has been determined relief is to be granted and that the proposed levy action is not sustained.

You have agreed to enter into an installment agreement in the amount of \$312 per month.

On October 31, 2016, petitioners filed a petition with this Court. Attached to the petition as exhibits are copies of the letter portion of each of the aforementioned duplicate original notices of determination, each of which is dated September 12, 2016, which date was a Monday. The petition arrived at the Court by certified mail in an envelope bearing a clearly-legible USPS postmark date of October 13, 2016, which was a Thursday.

I.R.C. section 6330(d)(1) requires that a petition be filed “within 30 days of a determination” if the Court is to have jurisdiction to adjudicate a dispute between the parties. I.R.C. section 7502 sets forth rules for equating timely mailing with timely filing. In the present case, the USPS postmark date of October 13, 2016, is 31 days after September 12, 2016.

Respondent, in his Response to the Court’s aforementioned Order To Show Cause, argues that “[t]he United States Postal Service tracking print-out shows the notices of determination sent to petitioners arrived at the USPA [sic] Facility on September 13, 2016, one day later than the postmark date” such that “[t]he 30-day period for timely filing the petition with this Court from a mailing date of September 13, 2016 would expire on October 13, 2016, which was not a legal holiday in the District of Columbia.”

There are several problems with respondent’s argument. First, the duplicate original notices of determination are each clearly dated September 12, 2016. Second, the certified mail receipts evidencing the mailing of the duplicate original notices of determination both bear a clearly-legible USPS postmark date of September 12, 2016, and reflect the mailing of such duplicate original notices from Holtsville, NY 11742. Third, USPS Tracking for each of the duplicate original notices of determination shows only that the mail pieces “arrived” at a “USPS Facility”, which is denominated as “MID PROCESSING AND DISTRIBUTION CENTER”, at 1:55 a.m. on September 13, 2016. USPS Tracking does not show the location of such center; the Court surmises that it may be the USPS Mid-Island

Processing and Distribution Center (P&DC) in Melville, New York. In any event, USPS Tracking does not show where the mail pieces were “accepted” into the USPS mail system. In contrast, the certified mail receipts constitute evidence that the mail pieces were “accepted” into the USPS mail system on September 12, 2016, in Holtsville, NY. Accordingly, September 12, 2016, is the date on which the 30-day statutory clock determining the Court’s jurisdiction began to tick. Because the Court lacks authority to extend this statutory period, the Court is obliged to make its Order To Show Cause absolute and to dismiss this case for lack of jurisdiction. Nevertheless, the parties may wish to consider the possibility of proceeding administratively to resolve the underlying matter regarding the collection alternative (i.e., installment payment agreement).

In view of the foregoing, it is hereby

ORDERED that the Clerk of the Court shall return to respondent, unprocessed, the form of decision that was executed by the parties and that was previously tendered to the Court. It is further

ORDERED that this case is stricken for trial from the Court’s trial session scheduled to commence on Monday, October 30, 2017, in Dallas, Texas. It is further

ORDERED that the Notice Reminding The Parties Of Trial, served September 18, 2017, shall be deemed to be stricken from the record. It is further

ORDERED that the Court’s Order To Show Cause, dated August 21, 2017, is made absolute, and this case is dismissed for lack of jurisdiction on the ground that the petition was not timely filed.

Petitioners are advised that, given the action herein dismissing this case for lack of jurisdiction, they need not (and should not) appear at the Court’s trial session on October 30, 2017, in Dallas, Texas, as this case will not be called from the calendar at that time.

(Signed) Robert N. Armen
Special Trial Judge

Entered: **SEP 20 2017**