

UNITED STATES TAX COURT
WASHINGTON, DC 20217

AMY L. GOLINE,)	
)	
Petitioner,)	
)	
v.)	Docket No. 20756-16S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This “stand-alone section 6015” case¹ is calendared for trial at the Court’s January 29, 2018 trial session in Baltimore, Maryland. However, pending now before the Court is respondent’s Motion To Dismiss For Lack Of Jurisdiction (motion to dismiss), filed September 29, 2017. In his motion to dismiss respondent moves to dismiss “upon the ground that the petition was not filed within the time prescribed by I.R.C. §§ 6015(e) and 7502.” On October 3, 2017, the Court ordered petitioner to file a response by October 24, 2017. Petitioner failed to do so. Most recently, on November 3, 2017, respondent filed a First Supplement to his pending motion to dismiss. For the reasons discussed *infra*, respondent’s motion to dismiss shall be granted.

The United States Tax Court is a court of limited jurisdiction and may exercise jurisdiction only to the extent expressly provided by statute. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). In a stand-alone innocent spouse case such as the present one, the petition must be filed no later than the close of the 90th

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended.

day after the Commissioner issues a final notice of determination to the taxpayer. See sec. 6015(e)(1)(A)(ii); Davidson v. Commissioner, 144 T.C. 273, 276 (2015).

The 90-day period prescribed in 6015(e)(1)(A)(ii) is computed by reference to, and starts running on, the date that the Internal Revenue Service (IRS) “mails” the final notice of determination by certified mail, not the date of attempted delivery, availability, or actual receipt of such notice. See Parlin v. Commissioner, T.C. Memo. 2006-18.

The IRS sent the final notice of determination to petitioner by certified mail on June 21, 2016, addressed to her at her last known address. Respondent has provided a U.S. Postal Service Form 3877, Certified Mailing List, showing that the notice of determination was sent to petitioner at her last known address on that date. Accordingly, petitioner was required to file her petition with this Court on or before September 19, 2016, which date was a Monday and not a legal holiday in the District of Columbia.

Petitioner did not use the U.S. Postal Service to send her petition to the Court; rather, she used a private delivery service (PDS). Sending a petition by a PDS may be treated as timely mailed under certain prescribed conditions. See sec. 7502(f)(1). In the present case the petition was received by the Court in an envelope that bears a designated PDS label with a ship date of Tuesday, September 20, 2016, which date was 91 days after the date of mailing of the final notice of determination. In particular, the petition was sent via FedEx Express Standard Overnight, and a FedEx tracking information confirms the September 20, 2016 ship date. The petition was filed with the Court on Wednesday, September 21, 2016, which date was 92 days after the final notice of determination was mailed to petitioner. Her petition was therefore untimely under the “timely mailing, timely filing” rule of section 7502(a) and also under the 90-day filing rule.

The requirement that the petition be filed within the statutorily prescribed time period is jurisdictional. See Pollock v. Commissioner, 132 T.C. 21, 30-31 (2009). The Court has no authority to extend the period provided by law for filing a petition “whatever the equities of a particular case may be and regardless of the cause for its not being filed within the required period.” Axe v. Commissioner, 58 T.C. 256, 259 (1972).

The fact that the notice of determination remained unclaimed and was ultimately returned to respondent by the United States Postal Service does not alter the foregoing rule given the fact that respondent sent the notice of determination by

certified mail to petitioner at her last known address. Further, it is indeed unfortunate that petitioner may have received inaccurate information during a telephone conversation from one of respondent's employees about the deadline for filing a petition; however, as relevant here the United States Supreme Court has made clear that the Commissioner is not bound by erroneous legal advice given by his agents. Dixon v. United States, 381 U.S. 68, 72-73 (1965); Auto. Club of Mich. v. Commissioner, 353 U.S. 180, 183-184 (1957). See McGuire v. Commissioner, 77 T.C. 765, 779-780 (1981).

Finally, under prescribed conditions it is possible that petitioner may have judicial recourse in another court system based on an action for refund. See McCormick v. Commissioner, 55 T.C. 138, 142 (1970). However, the possibility of such recourse is a matter that this Court need not, and does not, address; rather, in that regard, petitioner may wish to consult a competent tax advisor.

Accordingly, in view of the foregoing, it is hereby

ORDERED that respondent's Motion To Dismiss For Lack Of Jurisdiction, filed September 29, 2017, and supplemented on November 3, 2017, is granted, and this case is dismissed for lack of jurisdiction on the ground of an untimely-filed petition.

Petitioner is advised that because of this dismissal order, her case will not be called from the calendar of the Court's trial session commencing January 29, 2018, in Baltimore, Maryland, and that she therefore need not attend that session.

(Signed) Robert N. Armen
Special Trial Judge

ENTERED: **NOV 09 2017**