

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CHARLOTTE MARIE STRICKLER,)	
)	
Petitioner,)	
)	
v.)	Docket No. 18477-17S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On October 24, 2017, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground the petition was not filed within the time prescribed by the Internal Revenue Code. On November 21, 2017, petitioner filed a Notice of Objection to respondent’s motion to dismiss.

The record reflects that respondent sent a notice of deficiency for tax year 2015 to petitioner by certified mail on May 30, 2017. Pursuant to Internal Revenue Code (I.R.C.) sections 6213(a) and 7503, the period for filing a petition with this Court expired on August 28, 2017. However, the petition was not received by the Court and filed until August 30, 2017. The Court received the petition in an envelope bearing a FedEx Express Saver label with a ship date of “28AUG17”.

This Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In a case seeking the redetermination of a deficiency, the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. See I.R.C. sec. 6213(a); see also Rule 13(c), Tax Court Rules of Practice and Procedure; Brown v. Commissioner, 89 T.C. 215, 220 (1982). In this regard, and as relevant here, I.R.C. section 6213(a) provides that a petition must be filed with the Court within 90 days after the notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day). A timely mailed petition may be treated as though it

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were timely filed. I.R.C. sec. 7502(a). Thus, if a petition is received by the Court after the expiration of the 90-day period, it is deemed to be timely if the postmark date showing on the envelope in which the petition was mailed is within the time prescribed for filing. I.R.C. sec. 7502(a); sec. 301.7502-1, Proced. & Admin. Regs.

I.R.C. section 7502(f) governs the treatment of private delivery services, such as FedEx. It provides that a petition sent by a private delivery service may be treated as timely mailed, as follows:

SEC. 7502(f). Treatment of Private Delivery Services. –

- (1) In general. – Any reference in this section to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked as described by paragraph (2)(C) by any designated delivery service.
- (2) Designated Delivery Service. – For purposes of this subsection, the term “designated delivery service” means any delivery service provided by a trade or business if such service is designated by the Secretary for purposes of this section. * * *

In Notice 2015-38, 2015-21, I.R.B. 984, effective May 6, 2015, the Commissioner includes among the domestic designated private delivery services the following FedEx services: FedEx First Overnight, FedEx Priority Overnight, FedEx Standard Overnight, and FedEx 2 Day. Notice 2015-38 further provides that “FedEx * * * [is] not designated with respect to any type of delivery service not enumerated in this list.” See also sec. 301.7502-1(e)(2)(ii), Proced. & Admin. Regs. FedEx Express Saver, which petitioner used to send her petition to the Court, is not a designated private delivery service under Notice 2015-38, 2015-21 I.R.B. 984. In this case, therefore, the timely mailing/timely filing rule of section 7502(a) does not apply.

In her objection to respondent’s motion, petitioner essentially does not dispute respondent’s jurisdictional allegations. Rather, petitioner explains the merits of her case and requests that she be permitted to “refile my taxes” for tax year 2015. However, the record establishes that the petition was not timely filed,

and this Court has no authority to extend the statutory period for filing a timely petition, see Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, we are obliged to dismiss this case for lack of jurisdiction.

However, although petitioner may not prosecute this case in the Tax Court, petitioner may continue to pursue administrative resolution of the tax liability for 2015 directly with the Internal Revenue Service, possibly by way of a request for audit reconsideration or by filing an amended income tax return. Another remedy available to petitioner is to pay the tax, then file a claim for refund with the Internal Revenue Service. If the claim is denied (or not acted upon within six months), petitioner may 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 is granted, and this case is dismissed for lack of jurisdiction.

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

ENTERED: **DEC 29 2017**