

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MARTIN GAMINO,)	SR
)	
Petitioner,)	
)	
v.)	Docket No. 12773-17S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On June 6, 2017, the Court received and filed a petition for redetermination in this case which identified the year in issue as 2012. The petition arrived at the Court in an envelope bearing a U.S. Postal Service postmark of May 31, 2017.

On September 26, 2017, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground that the petition was not filed within the 90-day period prescribed in section 6213 or 7502.¹ Attached to respondent’s motion to dismiss is a certified mail list which shows that on May 12, 2015, respondent sent duplicate original notices of deficiency for the taxable year 2012 addressed to petitioner at: (1) P.O. Box 1136, Ventura, California; and (2) 8923 Nye Road, Ventura, California.

On November 20, 2017, petitioner filed a written objection asserting that he had not received the notice of deficiency in question. On December 28, 2017, respondent filed a First Supplement to Motion to Dismiss for Lack of Jurisdiction. On December 29, 2017, petitioner filed a written objection reiterating that he had not received the notice of deficiency. On January 31, 2018, respondent filed a Second Supplement to Motion to Dismiss for Lack of Jurisdiction.

¹Section references are to the Internal Revenue Code, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

On February 12, 2018, respondent's motion, as supplemented, was called for hearing in Los Angeles, California. Both parties appeared and were heard.

The Tax Court is a court of limited jurisdiction, and we may exercise our jurisdiction only to the extent authorized by Congress. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). The Court's jurisdiction to redetermine a deficiency depends upon the issuance of a valid notice of deficiency and a timely-filed petition. Rule 13(a), (c); Monge v. Commissioner, 93 T.C. 22, 27 (1989); Normac, Inc. v. Commissioner, 90 T.C. 142, 147 (1988). Section 6212(a) expressly authorizes the Commissioner, after determining a deficiency, to send a notice of deficiency to the taxpayer by certified or registered mail. It is sufficient for jurisdictional purposes if respondent mails the notice of deficiency to the taxpayer's "last known address". Sec. 6212(b); Frieling v. Commissioner, 81 T.C. 42, 52 (1983). If the notice of deficiency is mailed to the taxpayer at the taxpayer's last known address, actual receipt of the notice is immaterial. King v. Commissioner, 857 F.2d 676, 679 (9th Cir. 1988), aff'g 88 T.C. 1042 (1987); Yusko v. Commissioner, 89 T.C. 806, 810 (1987); Frieling v. Commissioner, 81 T.C. at 52. The taxpayer normally has 90 days from the date the notice of deficiency is mailed to file a petition in this Court for a redetermination of the deficiency. Sec. 6213(a).

As stated above, the record shows that on May 12, 2015, respondent mailed copies of the notice of deficiency in dispute to petitioner at two separate addresses in Ventura, California. One of the notices (sent to a P.O. Box) was returned to respondent undelivered and marked "Attempted Not Known". The second notice, sent to the Nye Road address, was returned to respondent after the U.S. Postal Service had attempted to effectuate delivery on at least two occasions and was marked "Unclaimed". During the hearing before this Court, petitioner acknowledged that he had been living at the Nye Road address for over 10 years.

Under the circumstances, we conclude that respondent properly mailed the notice of deficiency in dispute to petitioner's last known address. Consequently, whether petitioner actually received the notice of deficiency is immaterial. King v. Commissioner, 857 F.2d at 679.

Given that the notice of deficiency in dispute was properly mailed to petitioner on May 12, 2015, the 90-day period for filing a timely petition with the Court expired on August 10, 2015. The petition, however, was mailed to the Court on May 31, 2017, and filed on June 6, 2017--756 days after the notice of deficiency was mailed. It follows that the petition was not filed with the Court

within the 90-day period prescribed in sections 6213(a) and 7502(a). Accordingly, we are obliged to grant respondent's motion to dismiss for lack of jurisdiction.²

Upon due consideration and for cause, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction, filed September 26, 2017, as supplemented, is granted and this case is dismissed for lack of jurisdiction.

**(Signed) Daniel A. Guy, Jr.
Special Trial Judge**

ENTERED: **JUN 21 2018**

²Although petitioner cannot pursue his case in this Court, he is not without a remedy. In short, petitioner may pay the tax, file a claim for refund with the Internal Revenue Service, and if the claim is denied, 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 n.5 (1970).