

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

CONNECT YA COMMUNICATIONS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 7661-18.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

On August 30, 2018, respondent filed a Motion To Dismiss for Lack of Jurisdiction. On September 21, 2018, respondent filed a First Supplement to his motion to dismiss. In his motion to dismiss, as supplemented, respondent moves to dismiss this case for lack of jurisdiction on the grounds that: (1) the petition was not filed timely as to the January 17, 2018, deficiency notice issued to petitioner for taxable years 2012, 2013, 2014, and 2015; and (2) no notice of determination under I.R.C. section 6320 or 6330 was issued to petitioner for taxable years 2012, 2013, 2014, and 2015 that would confer jurisdiction upon the Court. Among other things, in support of his motion to dismiss, as supplemented, based upon a diligent search conducted of respondent's records, respondent states he has determined no notice of determination under section 6320 or 6330 was issued to petitioner for 2012, 2013, 2014, and 2015 that would confer jurisdiction upon the Court. On September 26, 2017, petitioner filed an Objection to respondent's motion to dismiss, as supplemented.

An imperfect petition commencing this case was filed on April 20, 2018. On June 18, 2018, petitioner filed an amended petition.

The record reflects that respondent sent a notice of deficiency to petitioner for 2012, 2013, 2014, and 2015 on January 17, 2018. The 90-day period under I.R.C. section 6213(a) for filing a timely Tax Court petition as to that deficiency notice expired on April 17, 2018. The petition, filed April 20, 2018, arrived at the Court in an envelope bearing a U.S. Postal Service Click-N-Ship Priority Mail 2-

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day label dated "04/18/2018"--one day after the statutory 90-day period expired. Tracking information from the USPS Tracking Webpage (attached as Exhibit B to respondent's August 30, 2018, motion to dismiss) shows that petition was accepted at the USPS origin facility on April 18, 2018.

In a deficiency case, the jurisdiction of the Court depends on (1) the issuance by the Commissioner of a notice of deficiency, and (2) the filing of a petition within 90 days (or 150 days if the notice is addressed to a person outside the United States) after the notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day). Mulvania v. Commissioner, 81 T.C. 65, 67 (1983); Brown v. Commissioner, 78 T.C. 215, 220 (1982); Rule 13(a) and (c), Tax Court Rules of Practice and Procedure.

This Court's jurisdiction in a case seeking review of a determination under I.R.C. section 6320 or 6330 for a particular tax year or period depends, in part, upon the issuance of a valid notice of determination for that year or period by the IRS Office of Appeals under section 6320 or 6330. Secs. 6320(c), 6330(d)(1); Offiler v. Commissioner, 114 T.C. 492 (2000); Rule 330(b). A condition precedent to the issuance of a notice of determination is the requirement that a taxpayer have requested a hearing before the IRS Office of Appeals within the 30-day period specified in section 6320(a) or 6330(a), and calculated with reference to an underlying Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 or Final Notice of Intent To Levy and Notice of Your Right to a Hearing for the particular year or period. See discussion in Andre v. Commissioner, 127 T.C. 68, 69-70 (2006).

In its Objection petitioner disputes the jurisdictional allegations set forth in respondent's motion, as supplemented, in that petitioner asserts it attempted to mail the petition to the Court timely on April 17, 2018, but that the U.S Postal Service affixed an untimely April 18, 2018, postmark, to the mailing envelope. Although extrinsic evidence is sometimes allowed to prove the date of mailing where an envelope containing a Tax Court petition lacks a postmark or the postmark is illegible, such evidence is irrelevant where the envelope bears a legible U.S. Postal Service postmark after the 90th day prescribed for filing a timely petition. I.R.C. sec. 7502(a); see also Shipley v. Commissioner, 572 F.2d 212, 214 (9th Cir. 1977); Kahle v. Commissioner, 88 T.C. 1063, 1068-1069 (1987); and Wiese v. Commissioner, 70 T.C. 712, 715 (1978). Accordingly, petitioner is not permitted to use extrinsic evidence to prove the petition was timely filed because that petition was received by the Court in an envelope that bears a legible, untimely (April 18, 2018) postmark.

As indicated above, the record reflects the petition was not filed timely as to the January 17, 2018, deficiency notice issued to petitioner for 2012, 2013, 2014, and 2015. The Court has no authority to extend the period for filing a timely petition. Axe v. Commissioner, 58 T.C. 256, 259 (1972). Consequently, the Court lacks jurisdiction to redetermine petitioner's proposed income tax liabilities for 2012, 2013, 2014, and 2015. Brown v. Commissioner, 78 T.C. 220; Rule 13(c), Tax Court Rules of Practice and Procedure. The record further shows that no notice of determination under I.R.C. section 6320 or 6330 was issued to petitioner for 2012, 2013, 2014 and 2015. I.R.C. secs. 6320(c), 6330(d)(1); Offiler v. Commissioner, 114 T.C. 492; Rule 330(b), Tax Court Rules of Practice and Procedure. Accordingly, we are obliged to dismiss this case for lack of jurisdiction.

Although petitioner cannot prosecute this case in this Court, petitioner may continue to pursue administrative resolution of its 2012, 2013, 2014, and 2015 tax liabilities directly with the Internal Revenue Service. Also, if financially feasible for it, 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 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, as supplemented, is granted and this case is dismissed for lack of jurisdiction.

**(Signed) Maurice B. Foley**  
**Chief Judge**

ENTERED: **SEP 28 2018**