

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

HARJIT BHAMBRA,)
)
Petitioner(s),)
)
v.) Docket No. 1395-16 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

The Court entered its decision in this collection proceeding for respondent on March 27, 2019. On May 1, 2019, we received and filed petitioner's motion to vacate decision pursuant to Rule 162 (motion).¹ Petitioner's grounds are that the Court erred in allowing respondent to proceed with the collection from petitioner of civil fraud penalties with respect to his 2003 and 2004 taxable years without respondent showing that he had satisfied the supervisory approval requirements for the assessment of penalties found in section 6751(b). See Chai v. Commissioner, 851 F.3d 190 (2d Cir. 2017), aff'g in part and reversing in part T.C. Memo. 2015-42; Graev v. Commissioner, 149 T.C. 485 (2018). Respondent objects (objection) to our granting the motion principally on the grounds that petitioner did not timely make the motion.

Rule 162 provides in pertinent part that any motion to vacate a decision shall be filed within 30 days after the decision has been entered unless the Court shall otherwise permit. In pertinent part, section 7502(a)(1) provides that, if any document required to be filed within a prescribed period is, after such period, delivered by the United States mail, the date of the United States postmark stamped on the cover in which such document is mailed shall be deemed to be the date of delivery and thus the date of filing. We have applied section 7502(a)(1) in

¹All rule references are to the Tax Court Rules of Practice and Procedure. All section references are to the Internal Revenue Code in effect for the years in issue.

considering the timeliness of a motion to vacate decision. See, e.g., Taylor v. Commissioner, T.C. Memo. 2017-212, at *11, aff'd in part, dismissed in part, 731 F. App'x 239 (4th Cir. 2018).

The 30th day proceeding our entry of decision on March 27, 2019, is April 26, 2019. The envelope in which petitioner's motion was mailed to the Court shows a postmark of April 27, 2019. Because that date is after April 26, 2019, the rule of section 7502(a)(1) does not apply. Thus, the motion is late, having been filed on April 27, 2018, which is one day after the time allowed by Rule 162 for such motions to be filed.

Because the motion was not timely, and because petitioner has not moved for leave to file the motion out of time, we will deny it on those grounds. In doing so, we note that, in support of the objection, respondent has presented documents evidencing supervisory approval of the civil fraud penalties that he imposed on petitioner. Exhibit A to the objection is a civil penalty approval form evidencing that the manager who worked on examination of petitioner's 2003 and 2004 returns approved the penalties. To reflect the foregoing, it is

ORDERED that the motion is denied.

**(Signed) James S. Halpern
Judge**

Dated: Washington, D.C.
June 25, 2019