

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JOSEFA CASTILLO,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 18336-19 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On January 6, 2020, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground the petition was not filed timely as to the notice of determination concerning collection action dated December 11, 2018, issued with respect to petitioner's unpaid income tax liability for taxable year 2014. On March 2, 2020, petitioner filed her Objection to respondent's motion to dismiss. On March 24, 2020, respondent filed his Response to Order Dated 03/03/2020.

The record reflects that respondent sent by certified mail a notice of determination concerning collection action for 2014 to petitioner at her last known address on December 11, 2018. The 30-day period under I.R.C. section 6330(d)(1) for filing a timely Tax Court petition as to that notice of determination expired on January 10, 2019. However, under this Court's opinion in Guralnik v. Commissioner, 146 T.C. 230, 252-253 (2016), the period for filing a timely Tax Court petition as to that notice expired on January 29, 2019, the first accessible day after the Tax Court reopened for business following the government shutdown.¹ The petition, filed October 8, 2019, arrived at the Court in an envelope bearing a UPS Next Day label dated October 7, 2019--249 days after January 29, 2019. That petition was also signed and dated by petitioner's counsel as of October 7, 2019.

¹Due to a lapse in appropriations the Tax Court ceased full operations on Friday, December 28, 2018. The Court resumed normal operations on January 28, 2019.

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In her Objection petitioner asserts/indicates that: (1) respondent has not provided a properly completed U.S. Postal Service Form 3877 establishing the IRS sent the notice of determination by certified mail to petitioner at her last known address on December 11, 2018; and (2) the U.S. Postal Service never delivered that notice of determination to her. Contrary to petitioner's argument, however, even without the presumption of official regularity afforded by a properly completed USPS Form 3877, the IRS can still prevail so long as it provides evidence of mailing that is "otherwise sufficient". See Welch v. United States, 678 F.3d 1371, 1377, 1378-1379 (Fed. Cir. 2012). As respondent notes in his March 24, 2020, Response, attached as Exhibit B to respondent's motion to dismiss is a USPS Form 3800 which includes a U.S. Postal Service postmark dated December 11, 2018, and a certified mail number that matches the certified mail number on the notice of determination.

Further, the procedures authorized by I.R.C. section 6212(a) and (b) for sending a notice of deficiency apply to the mailing of a notice of determination issued pursuant to I.R.C. section 6320 and/or 6330. Weber v. Commissioner, 122 T.C. 258, 261-262 (2004); Balice v. Commissioner, T.C. Memo. 2005-35. A notice of determination issued in a collection due process case that is mailed in accordance with section 6212(a) and (b) is sufficient to start the 30-day period within which a taxpayer may appeal the determination to the Tax Court under section 6330(d). Weber v. Commissioner, 122 T.C. at 261-262. If a notice of determination issued pursuant to section 6330 is properly mailed to a taxpayer's last known address by certified mail, the date on which the taxpayer actually receives the notice of determination is irrelevant in determining whether a petition appealing that determination was filed within the 30-day period prescribed in section 6330(d)(1). Weber v. Commissioner, 122 T.C. at 263.

As discussed above the record reflects the petition was not filed timely as to the December 11, 2018, notice of determination issued to petitioner for 2014 upon which this case is based. Accordingly, we lack jurisdiction to review that notice of determination concerning collection action. I.R.C. sec. 6330(d)(1); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); Rule 330(b), Tax Court Rules of Practice and Procedure.

Upon due consideration, it is

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction, filed January 6, 2020, is granted and this case is dismissed for lack of jurisdiction.

(Signed) Maurice B. Foley
Chief Judge

ENTERED: **MAR 25 2020**