

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

BRYCE KENT SMITH & NATOSHA ANN )  
 SMITH F.K.A. NATOSHA ANN BARHAM, )  
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 Petitioners, )  
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 v. ) Docket No. 3463-20.  
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 COMMISSIONER OF INTERNAL REVENUE, )  
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 Respondent )  
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**ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

On April 17, 2020, respondent filed in the above-docketed case a Motion To Dismiss for Lack of Jurisdiction, on the ground that the petition herein was not filed within the time prescribed by section 6213(a) or 7502 of the Internal Revenue Code (I.R.C.). Respondent attached to the motion a copy of a certified mail list, as evidence of the fact that a notice of deficiency for the taxable year 2017, dated November 18, 2019, had been sent to petitioners by certified mail on November 18, 2019.

The petition was filed with the Court on February 21, 2020, which date is 95 days after the date of the notice of deficiency for tax year 2017 mailed to petitioners. The petition was received by the Court via UPS Next Day Air. UPS electronic database tracking information, a copy of which was attached to the motion to dismiss, shows that the item was shipped (picked up) by UPS on February 20, 2020, which date is 94 days after the date of the notice of deficiency.

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. Rule 13(c), Tax Court Rules of Practice and Procedure; Brown v. Commissioner, 78 T.C. 215, 220 (1982). In this regard, section 6213(a), I.R.C., provides that the petition must be filed with the Court 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). The Court has no authority to extend this 90-day (or 150-day) period. Joannou v. Commissioner,

33 T.C. 868, 869 (1960). However, a petition shall be treated as timely filed if it is filed on or before the last date specified in such notice for the filing of a Tax Court petition, a provision which becomes relevant where that date is later than the date computed with reference to the mailing date. Sec. 6213(a), I.R.C. Likewise, if the conditions of section 7502, I.R.C., are satisfied, a petition which is timely mailed may be treated as having been timely filed.

In the present case, the time for filing a petition with this Court expired on February 18, 2020. However, the petition was not filed within that period.

Petitioners were served with a copy of respondent's motion to dismiss and, on May 6, 2020, filed an objection, with attachment. Therein, petitioners did not directly deny the jurisdictional allegations set forth in respondent's motion, i.e., petitioners did not claim to have sent a petition or other correspondence to the Tax Court before the stated deadline of February 18, 2020. Rather, petitioners took the position that they responded to the notice of deficiency within the requested 90-day period, and that the petition should be considered timely, based on a series of communications to address the matter directed toward the Internal Revenue Service (IRS), all of which occurred on or before February 18, 2020. First, petitioners noted that they had contacted the IRS by telephone for assistance on February 15, 2020, but were advised that the notice of deficiency was not reflected in the IRS systems. They then faxed the petition on February 17, 2020, to the IRS at 1-877-477-9485, referencing the following language in the notice of deficiency: "You may fax additional information together with the enclosed Form 5564 (or signed statement explaining which items you disagree with and why) to 1-877-477-9485." Such details were further corroborated by the attached fax transaction report. Their third step was to send the paper original to the IRS via Fed Ex Standard Overnight with a documented formal ship date of February 18, 2020.

Generally consistent with petitioners' representations regarding mailing, the record herein reflects that the petition was initially sent to the IRS in Andover, Massachusetts. To wit, enclosed within the envelope in which the petition was received by the Court was another envelope addressed "Department of the Treasury, Internal Revenue Service, 310 Lowell St., Andover, MA 01810", with petitioners' address as the return address and a FedEx generated mailing label bearing a ship date of February 18, 2020. The document was received by the IRS in Andover on February 19, 2020, as shown by date stamps on the multiple pages. The IRS then placed all these materials within a larger envelope addressed to the Tax Court and resent them to the Court by UPS Next Day Air on February 20, 2020. As noted previously, they arrived at the Court on February 21, 2020, and were filed to commence this case.

Hence, given the foregoing, petitioners' objection and other documents in the record show that after receiving the notice of deficiency, petitioners endeavored to communicate with and to submit information to, and to seek information from, the IRS. The law is well settled, however, that once a notice of deficiency has been issued, further administrative contact or consideration does not alter or suspend the running of the 90-day period. Even confusing IRS responses or correspondence during the administrative process cannot override the clearly stated deadline in the statutory notice of deficiency. Such confusion is not uncommon given that the IRS frequently treats as separate processes or proceedings what taxpayers view as a single

dispute. Taxpayers not infrequently have also conflated this Court with an IRS unit, but the IRS is a completely separate and independent entity from the Tax Court.

In particular, petitioners regrettably misinterpreted the contact information provided in the notice of deficiency. The telephone and fax numbers given are for the IRS, not the Tax Court, to allow taxpayers to proceed administratively with the agency. For the Tax Court, only a mailing address is provided, as the Court does not accept petitions by fax. The first page of the notice (with carryover to the top of page 2) specifically explains how to file a petition with the U.S. Tax Court. The second page of the notice, under the heading “You may be able to resolve your dispute with the IRS”, provides additional steps that taxpayers may take in response to the notice, as either a supplement or an alternative to filing a Tax Court petition. Taxpayers are advised that, if they do not agree with the changes and want the IRS to consider additional information, that information should be mailed or faxed to the IRS in Andover and not to the Tax Court. The reason for this is that no additional information, such as supporting documentation or evidentiary materials, should accompany a Tax Court petition. Rather, such evidentiary materials are sent to and considered by the IRS. The section even closes with a warning: “Our consideration of any additional information will not extend the February 18, 2020 deadline to file a petition with the U.S. Tax Court.”

Although section 7502, I.R.C., allows a timely mailed petition to be treated as timely filed, that section mandates that the envelope bearing the petition be “properly addressed to the agency, officer, or office with which the document is required to be filed.”. Sec. 7502(a)(2)(B), I.R.C. A petition seeking redetermination of a deficiency must be filed with this Court and not the IRS. Sec. 6213(a), I.R.C. Hence, the mailing (or faxing) of a petition, correspondence, return, or other documentation to the IRS is not sufficient to confer jurisdiction on this Court. Axe v. Commissioner, 58 T.C. 256 (1972). The statute is clear, and this Court must follow it. Estate of Cerrito v. Commissioner, 73 T.C. 896 (1980). The Court would also note that a notice of deficiency issued to a taxpayer states on its face the last day to petition the Tax Court (not the IRS) and provides expressly in multiple places that the filing period extends 90 days from the date of the letter. The first pages of the notice are likewise explicit in providing that petitions must be filed with the U.S. Tax Court and in giving the Court’s address as “400 Second Street, NW, Washington, DC 20217”. With these definitive rules regarding the inefficacy of written correspondence to the IRS, it is clear that efforts to contact the IRS by phone (or fax) can offer no greater protection.

Furthermore, it is equally well settled that where the Commissioner’s representatives provide erroneous advice based upon a mistaken interpretation of the law, courts and the Commissioner are not bound by the agent’s statements and must follow the applicable statutes, regulations, and caselaw. *See, e.g.,* Dixon v. United States, 381 U.S. 68, 72-73 (1965); Auto. Club of Mich. v. Commissioner, 353 U.S. 180, 183 (1957); Neri v. Commissioner, 54 T.C. 767, 771-772 (1970). Consequently, the same result must obtain regardless of whether the jurisdictional question is later raised by the Commissioner or by the Court sua sponte. Moreover, despite its superficial appeal, it has long been the rule that the doctrine of equitable estoppel is unavailable in these circumstances. As this Court has stated, an “estoppel argument must fail for the simple reason that the doctrine of estoppel cannot create jurisdiction where none otherwise exists.” Energy Res., Ltd. v. Commissioner, 91 T.C. 913, 917 (1988).

Thus, while the Court is sympathetic to petitioners' situation and understands the unintentional character of the inadvertence here, as well as the challenges of the circumstances faced and the good faith efforts made, governing law recognizes no applicable exceptions that would allow petitioners to proceed in this judicial forum.<sup>1</sup> As a Court of limited jurisdiction, the Court is unable to offer any remedy or assistance when a petition is filed late. Rather, the Court is barred from considering in any way petitioners' case or the correctness of petitioners' claims. Unfortunately, controlling law permits no reasonable cause or other relevant exception to the statutory deadline, and the allegation that the petition was sent to the Tax Court two days late remains unrebutted.

The Court has no authority to extend that period provided by law for filing a petition "whatever the equities of a particular case may be and regardless of the cause for its not being filed within the required period." Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, since petitioners have failed to establish that the petition was mailed to or filed with this Court within the required 90-day period, this case must be dismissed for lack of jurisdiction. The Court would, however, encourage petitioners to continue working administratively through the IRS, which in certain circumstances may be able to offer alternative avenues for relief, not dependent on the existence of a Tax Court case, such as audit reconsideration or a refund action.

The premises considered, 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) Maurice B. Foley**  
**Chief Judge**

ENTERED: **MAY 07 2020**

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<sup>1</sup> To the extent that petitioners also reference the COVID-19 pandemic, the Court would observe that an emergency declaration in the United States was not issued until March 13, 2020, nearly a month after the due date of the petition. Moreover, insofar as petitioners were able to mail the petition timely to the IRS, there was no prohibitive effect on their ability to comply with the deadline.