

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DAVID MICHAEL MASER, )  
 )  
 Petitioner, )  
 ) **ALS**  
 v. ) Docket No. 19497-11S.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On October 19, 2011, respondent filed a Motion To Dismiss for Lack of Jurisdiction on grounds that the petition was not filed within the time prescribed by I.R.C. section 6213(a) or section 7502. In support of the motion to dismiss, respondent attached a copy of a U.S. Postal Service postmark date stamped and executed certified mail list, Form 3877, to show that the notice of deficiency on which this case is based was mailed to petitioner at his last known and current address on May 13, 2011.

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 addition, jurisdiction must be proven affirmatively, and a party invoking our jurisdiction bears the burden of proving that we have jurisdiction over the party's case. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960); National Comm. to Secure Justice, Etc. v. Commissioner, 27 T.C. 837, 839 (1957). In order to meet this burden, the party must establish affirmatively all facts giving rise to our jurisdiction. See Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, *supra* at 180; Consolidated Co. v. Commissioner, 15 B.T.A. 645, 651 (1929).

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). Rule 13(a) and (c), Tax Court Rules of Practice and Procedure; Mulvania v. Commissioner, 81 T.C. 65, 67 (1983); Brown v. Commissioner, 78 T.C. 215, 220 (1982).

The record shows that respondent mailed the notice of deficiency on which this case is based to petitioner on May 13, 2011. The last day to timely file a petition with this Court expired on August 11, 2011. On August 11, 2011, petitioner mailed the petition to respondent. On August 15, 2011, respondent returned the petition to petitioner. On August 17, 2011, which date is 96 days after respondent mailed the notice of deficiency on which this case is based, petitioner mailed the petition to this Court where it was filed on August 22, 2011.

On November 14, 2011, petitioner filed a Response to Motion To Dismiss. In it, petitioner did not dispute the jurisdiction allegations in the motion to dismiss. Instead, petitioner alleges that an employee of respondent told petitioner to mail the response to the notice of deficiency to respondent.

The law is clear that erroneous legal advice rendered by employees of the IRS generally is not binding on the Commissioner. Dixon v. United States, 381 U.S. 68, 72-73 (1965); Schuster v. Commissioner, 312 F.2d 311 (9th Cir. 1962), affg. in part and revg. in part 32 T.C. 998 and 32 T.C. 1017 (1959); Fortugno v. Commissioner, 41 T.C. 316 (1963), affd. 353 F.2d 429 (3d Cir. 1965). In any event, the Commissioner cannot waive the jurisdictional requirements, and jurisdiction cannot be established by estoppel. The notice of deficiency provides "If you want to contest this determination in court before making any payment, you have 90 days from the date of this letter \* \* \* to file a petition with the United States Tax Court for a redetermination of the deficiency." This Court, however, 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). The Court cannot rely upon general equitable principles to expand its statutorily prescribed jurisdiction. Woods v. Commissioner, 92 T.C. 776, 784-785 (1989). Accordingly, since the petition was not filed within the required 90-day period, we are obliged to grant respondent's motion and dismiss this case for lack of jurisdiction.

Upon consideration and for cause, 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) John O. Colvin  
Chief Judge**

ENTERED: **NOV 29 2011**