

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Charnaë Mattrice Hester,)	KVC
)	
Petitioner,)	
)	
v.)	Docket No. 10495-12.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On June 15, 2012, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground the petition was not filed within the 90-day period prescribed by I.R.C. sections 6213(a) or 7502. Respondent attached to his motion a copy of the postmark date stamped Certified Mail List as evidence that the notice of deficiency for taxable year 2010 was sent to petitioner's last known, and current, address by certified mail on January 3, 2012.

The petition in this case was filed on April 27, 2012, which date is 115 days after the mailing of the notice of deficiency for taxable year 2010. The petition was received by the Court in a envelope bearing a U.S. Postal Service postmark date of April 20, 2012, which is 108 days after the notice of deficiency was mailed.

The Tax Court is a court of limited jurisdiction and the Court may exercise jurisdiction only to the extent expressly authorized by Congress. 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, I.R.C. section 6213(a) 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). I.R.C. section 7502(a) generally provides that timely mailing of a petition will be treated as timely filing of that petition, but only if, among other things, (1) the postmark date on the envelope in which such petition is mailed falls within the prescribed period for filing such petition and (2) the petition was deposited in the mail within that prescribed period in an envelope **bearing proper postage** and properly addressed to the Tax Court. I.R.C. sec. 7502(a)(2)(A)(i) and (B); sec. 301.7502-1(c)(1), *Proced. & Admin. Regs.* (Emphasis added.) The Court has no authority to extend this 90 day (or 150 day) period. Joannou v. Commissioner, 33 T.C. 868, 869 (1960).

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In the present case, the notice of deficiency for taxable year 2010 was sent to petitioner at her last known, and current, address by certified mail on January 3, 2012. The period for petitioner to file a timely petition with this Court as to that notice of deficiency, expired on April 2, 2012. However, the petition was neither timely mailed with sufficient postage applied, nor timely filed, within that 90-day period.

Petitioner was served with a copy of respondent's Motion to Dismiss and, on July 16, 2012, filed an Objection thereto. Therein, petitioner states that she initially mailed the petition before the 90-day filing period expired, but it was returned to her by the U.S. Postal Service because it did not bear proper postage. Petitioner appears to rely on the "timely mailing is timely filing" rule of I.R.C. section 7502, however, the benefits of that rule are unavailing here because when the petition was initially mailed, it did not bear proper postage. Accordingly, the date the petition was re-mailed with sufficient postage applied controls.

The record establishes that the petition was not filed within the applicable statutory 90-day period. This 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, this Court lacks jurisdiction to redetermine the deficiency determined in the notice of deficiency for 2010. Rule 13(c), Tax Court Rules of Practice and Procedure; Brown v. Commissioner, *supra*; Joannou v. Commissioner, *supra*.

Petitioner cannot prosecute a case in this Court. Petitioner may, however, pursue administrative resolution of her tax liability for 2010 by filing a request for audit reconsideration directly with the Internal Revenue Service. If feasible, petitioner may also elect to pay the tax determined due, 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 the U.S. Court of Federal Claims. See McCormick v. Commissioner, 55 T.C. 138, 142 (1970).

Upon due consideration of the foregoing, 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) Michael B. Thornton
Chief Judge

ENTERED: **AUG 21 2012**