

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

KIRK ARTHUR AIKEY & JUANITA GAIL)	
AIKEY,)	
)	
Petitioners,)	
)	
v.)	Docket No. 6340-14S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On April 9, 2014, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground that the petition was not timely filed within the period prescribed by the Internal Revenue Code (I.R.C.). Respondent attached to the motion a copy of the Form 3877, Certified Mail List, as evidence of the fact that a notice of deficiency for tax years 2008 and 2009 was sent to petitioners by certified mail on December 16, 2013.

The petition was filed with the Court on March 19, 2014, which date is 93 days after the notice of deficiency for tax years 2008 and 2009 was mailed to petitioners. The petition was received by the Court in a FedEx Express envelope which bears a mailing date of March 18, 2014, which date is 92 days after the mailing of the notice of deficiency.

The last date by which petitioners could timely petition this Court with respect to the 2008 and 2009 notice of deficiency was March 17, 2014. The petition was not filed within this time.

Petitioners were served with a copy of respondent's Motion to Dismiss for Lack of Jurisdiction and given the opportunity to file an Objection. On May 2, 2014, petitioners filed a Letter dated May 1, 2014, which we shall treat as petitioners' Objection to respondent's motion. In that Letter, petitioners do not dispute respondent's jurisdictional allegations. Rather, petitioners state that they needed assistance putting their appeal together, and due to a snow storm in the Washington, D.C. area, their ability to contact a particular person and finalize their paperwork was delayed. Furthermore, petitioners assert that the Court's closure on March 17, 2014 due to inclement weather, should extend their time for filing.

Section 7508A, I.R.C., authorizes the Secretary to postpone certain tax related deadlines in situations involving Presidentially declared disasters. A review of the Federal Emergency Management Agency's (FEMA) website does not show that there were any Presidential disaster

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declarations issued for the Washington, D.C. area on or around March 17, 2014. In the absence of such a declaration, the storm, even if it caused a closure of Federal buildings, can provide no relief from the 90- day deadline for purposes of section 7508A.

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) of the 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). The record shows that the petition was not timely filed. Accordingly, we are obliged to dismiss this case for lack of jurisdiction.

Although petitioners cannot prosecute this case in this Court, they are not without recourse. Petitioners may pay the tax, 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).

In view 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: **MAY 21 2014**