

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRB

YISROEL GOLDSTEIN & TEMI GOLDSTEIN,)
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 Petitioners,)
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 v.) Docket No. 6373-14S.
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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 May 16, 2014, respondent filed in the above-captioned 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. 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 2011 was sent to petitioners by certified mail on December 2, 2013.

The petition was filed with the Court on March 20, 2014, which date is 108 days after the notice of deficiency for tax year 2011 was mailed to petitioners. The petition was received by the Court in an envelope that bears U.S. Postal Service Click-N-Ship postage purchased on March 13, 2014, which date is 101 days after the mailing 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, 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.

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In the present case, the time for filing a petition with this Court expired on March 3, 2014. However, the petition was not filed within that period.

Petitioners were served with a copy of respondent's motion to dismiss and, on June 11, 2014, filed a response in objection. Therein, petitioners did not deny the jurisdictional allegations set forth in respondent's motion and in fact conceded "that the petition was not filed in the appropriate time (due to an error on my part that I had the wrong date written down as to when I needed to respond by)". Rather, the objection explained petitioners' efforts to resolve their tax matters administratively within the Internal Revenue Service (IRS) and detailed multiple attempts to submit information, explanation, and documentation. Petitioners further suggested that they should not be "penalized" for the late petition when, given their prior submissions to the IRS and the merits of their substantive position, the need to instigate a court case should never have arisen.

Thus, the objection shows that petitioners have been forthcoming in their efforts to communicate with the IRS in support of their claims. The law is well settled, however, that once a notice of deficiency has been issued, further administrative consideration does not alter or suspend the running of the 90-day period. Even confusing correspondence, written or verbal, 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.

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 Internal Revenue Service. Sec. 6213(a), I.R.C. Hence, the mailing of a petition, or other documentation, to the Internal Revenue Service 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 notice is 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".

Thus, while the Court is sympathetic to petitioners' situation and understands the unintentional character of the inadvertence here, the fundamental nature of the filing deadline precludes the case from going forward. Notably, while trials of small tax cases are to be conducted informally, with flexibility in the admission of evidence, as per Rule 174(b) of the Tax Court Rules of Practice and Procedure, statutes do not permit such leniency with respect to the filing deadlines. 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 their claims. Unfortunately, governing law recognizes no reasonable cause or other applicable exception to the statutory deadline, and the allegation that the petition was sent more than a week 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 statutory period, this case must be dismissed for lack of jurisdiction.

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) Michael B. Thornton
Chief Judge

ENTERED: **JUN 13 2014**