

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

VASILIS E. TOXAVIDIS & LYNDI E. TOXAVIDIS,)	
)	SD
)	
Petitioners,)	
)	
v.)	Docket No. 1667-15S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On March 19, 2015, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground that the petition was not filed within the period prescribed by Internal Revenue Code (I.R.C.). Respondent attached to the motion a copy of a Facsimile PS Form 3877 as evidence of the fact that a notice of deficiency for 2011 and 2012 was sent to petitioners by certified mail on October 16, 2014.

Petitioners filed the petition with the Court on January 20, 2015, which date is 96 days after the notice of deficiency for tax years 2011 and 2012 was mailed to petitioners. The petition was received by the Court in an envelope bearing a UPS Ground shipping label with a ship date of January 15, 2015, which date is 91 days after the notice of deficiency was mailed to petitioners. The last date by which petitioners could timely petition this Court with respect to the notice of deficiency was January 14, 2015.

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 April 9, 2015, petitioners filed Notice of Objection to Motion to Dismiss for Lack of Jurisdiction. In that objection, petitioners argue that the "timely mailed, timely filed" rule of I.R.C. should apply because "[t]he petition was postmarked timely January 14, 2015." In support of this contention, petitioners attached to the Objection a copy of a receipt from the UPS Store, dated January 14, 2015. The tracking number on the receipt matches the tracking number on the envelope in

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which petitioners' petition was mailed to the Court. Petitioners also "ask the Court to take into consideration the weather conditions in the Northeast and especially Boston area, which were not favorable for travel and mail delivery."

On May 6, 2015, respondent filed a Response to Notice of Objection to Motion to Dismiss for Lack of Jurisdiction. Therein, respondent asserts that the petition was not filed within the time prescribed by I.R.C. sections 6213(a) or 7502 because UPS Ground has not been designated by respondent as a private delivery service. Respondent also asserts that the Federal Emergency Management Agency (FEMA) has not designated any areas in Massachusetts as having been affected by a presidentially declared disaster around the date the petition was due to be filed with the Court.

Section 7508A of the I.R.C. authorizes the Secretary to postpone certain tax related deadlines in situations involving presidentially declared disasters. A review of FEMA's website does not show that a Presidential disaster declaration was issued for the Boston, Massachusetts area on or around January 14, 2015. In the absence of such a declaration, the weather, 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).

In certain instances, I.R.C. section 7502 provides that a petition is deemed to be timely filed if timely mailed. A petition is timely mailed if the date of the U.S. Postal Service postmark stamped on the envelope in which the petition was mailed is within the time for filing, sec. 7502(a)(1), (2)(A); sec. 301.7502-1(c)(1)(iii), *Proced. & Admin. Regs.*, and the envelope containing the petition is properly addressed and bears sufficient postage, see sec. 7502(a)(2)(B); sec. 301.7502-

1(c)(1)(i), (ii), Proced. & Admin. Regs. I.R.C. section 7502(f) extends this “timely mailed, timely filed” rule to certain private delivery services. This extension of the I.R.C section 7502(a)(1) rule applies only “if such service is designated by the Secretary for purposes of this section.” Sec. 7502(f)(2).

In Notice 2004-83, 2004-2 C.B. 1030, the Internal Revenue Service listed all private delivery services that have been designated by the Secretary under I.R.C. section 7502(f). The UPS delivery services included on this list are as follows: UPS Next Day Air; UPS Next Day Air Saver; UPS 2nd Day Air, UPS 2nd Day Air A.M.; UPS Worldwide Express Plus; and UPS Worldwide Express. Thus, UPS Ground is not a “designated private delivery service” within the meaning of I.R.C. section 7502(f). See Raczkowski v. Commissioner, T.C. Memo. 2007-72 (holding that the “timely mailed, timely filed” rule of section 7502 does not apply to “UPS Ground” because that service is not a designated private delivery service under Notice 2004-83).

The record shows the petition in this case fails to qualify under the timely mailing/timely filing provisions of I.R.C. section 7502. The petition was not timely filed with respect to the deficiency notice for tax years 2011 and 2012. The Court has no authority to extend the statutory period for filing a timely petition. Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, we are obliged to dismiss this case for lack of jurisdiction.

The fact that the Court is obliged to dismiss this case for lack of jurisdiction does not preclude the parties from administratively resolving the deficiency issues if they are able to do so. Also, 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 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, filed March 19, 2015, is granted, and this case is dismissed for lack of jurisdiction.

(Signed) Michael B. Thornton
Chief Judge

ENTERED: **JUL 01 2015**