

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

MARCELLA LYNNE NIXON,)
)
Petitioner(s),)
)
v.) Docket No. 4702-15.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On April 23, 2015, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground that the petition was not filed within the time prescribed by the applicable provisions of the Internal Revenue Code (I.R.C.). Respondent attached to the motion a copy of a Substitute PS Form 3877 as evidence of the fact that a notice of deficiency for tax year 2011 was sent to petitioner by certified mail on November 18, 2014.

The record reflects that respondent mailed a notice of deficiency to petitioner for tax year 2011 on November 18, 2014. The period for filing a petition with this Court expired on February 17, 2015. The petition was filed on February 19, 2015. The Court received it in an envelope that bears a postmark dated February 18, 2015.

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. See I.R.C. sec. 6213(a); see also 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

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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).

A timely mailed petition may be treated as though it were timely filed. I.R.C. sec. 7502(a). Thus, if a petition is received by the Court after the expiration of the 90-day period, it is nevertheless deemed to be timely if the date showing on the envelope in which the petition was mailed is within the time prescribed for filing. I.R.C. sec. 7502(a); sec. 301.7502-1, *Proced. & Admin. Regs.* In this case, the timely mailing/timely filing provision of I.R.C section 7502(a) is inapplicable because the envelope in which the petition arrived to the Court bears an untimely postmark.

Petitioner was served with a copy of respondent's Motion to Dismiss for Lack of Jurisdiction. On May 14, 2015, petitioner filed a Notice of Objection to Motion to Dismiss for Lack of Jurisdiction. Therein, petitioner states, among other things, that during the period in which the petition was due to be filed with the Court, there was a snow storm in Washington, D.C., and Atlanta, Georgia was under the threat of an ice storm. Petitioner contends that these storms caused the Court to close and caused a delay in mail processing, which resulted in her petition being filed after the deadline.

On June 23, 2015, respondent filed a Response to Notice of Objection to Motion to Dismiss for Lack of Jurisdiction. Therein, respondent states that on February 17, 2015, State and Federal government offices in Atlanta, Georgia experienced only a delay opening because of weather conditions.

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 declarations issued for either the State of Georgia or the Washington, D.C. area on or around February 17, 2015. 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.

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 of its not being filed within the required period." Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, since the petition was not filed within the required 90-day period, this case must be dismissed 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 issues if they are able to do so. Also, petitioner 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).

Upon due consideration, 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: **JUL 21 2015**