

## UNITED STATES TAX COURT

WASHINGTON, DC 20217

MATTHEW ERIC BAHAM & JENNIFER )  
 MICHELLE BAHAM, )

Petitioners )

v. )

COMMISSIONER OF INTERNAL REVENUE, )

Respondent )

) Docket No. 25666-14S.  
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**ORDER**

This case is before the Court on petitioners' challenge of respondent's determination of a deficiency in the amount of \$12,213.00 and penalty under section 6662(a)<sup>1</sup> in the amount of \$2,442.60. On May 23, 2016 the Court ordered each party to submit a brief on the validity of the endicia.com postmark and its interplay with section 7502 on or before June 6, 2016. On June 3, 2016, respondent filed a supplement brief with the Court in response to the Court's order. As of the date of this Order, petitioners have failed to file a brief.

In the supplemental brief, respondent argues that the petition was timely as the envelope was postmarked on October 22, 2014. This argument relies on the regulations under section 7502, mainly that the petition satisfies Treas. Reg. §301.7502-1(c)(1)(iii)(B)(1). Respondent notes that there is "no indication that the requirements of Treas. Reg. §301.7502-1(c)(1)(ii) (sufficient postage and deposited within the prescribed time, i.e., on October 22, 2014) were not met". The brief states that respondent disagrees with this Court's analysis and holding in Tilden v. Commissioner, T.C. Memo 2015-188 and Boutlbee v. Commissioner, T.C. Memo 2011-11.

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<sup>1</sup>All section references are to the Internal Revenue Code of 1986, as amended, in effect for the year at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

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Jurisdiction (a legal term for the power or authority from Congress to hear the case) must be shown affirmatively, and petitioners, as the party invoking our jurisdiction in the case at bar, bear the burden of proving that we have jurisdiction over their case. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960); National Comm. to Secure Justice, Etc. v. Commissioner, 27 T.C. 837, 839 (1957). In order to meet their burden, petitioners must establish affirmatively all facts giving rise to our jurisdiction. See Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, supra at 180; Consolidated Co. v. Commissioner, 15 B.T.A. 645, 651 (1929). Petitioners must establish that: (1) Respondent issued to them a valid notice of deficiency, and (2) they, or someone authorized to act on their behalf, filed with the Court a timely petition. See Rule 13(a), (c); Monge v. Commissioner, 93 T.C. 22, 27 (1989); Fehrs v. Commissioner, supra at 348; National Comm. to Secure Justice, Etc. v. Commissioner, supra at 839. See generally sec. 6213(a) (a taxpayer, such as petitioners, must file with the Court a petition for redetermination within 90 days, unless living outside the United States then 150 days, from the date of the notice of deficiency). Here, the validity of the notice of deficiency is not in question. The issue remains whether the petition was filed timely with the Court under section 7502.

After reviewing respondent's brief, the Court tentatively disagrees that there is no indication that the petition was not timely deposited. The petition was sent via the U.S. Postal Service (USPS) by first-class mail. The envelope containing the petition bears a mailing label with a "postmark" by "endicia.com" of October 22, 2014. The envelope also bears a "certified mail" sticker with the following 22-digit tracking number: 9407110200881362698267. We take judicial notice of the USPS tracking information and Frequently Asked Questions on the USPS website.<sup>2</sup> The tracking information obtained from the USPS indicated that "pre-

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<sup>2</sup>A court may take judicial notice of appropriate adjudicative facts at any stage in a proceeding, whether or not the notice is requested by the parties. See Fed. R. Evid. 201(c), (f); see also United States v. Harris, 331 F.2d 600, 601 (6th Cir. 1964) (explaining that a court may take judicial notice sua sponte). In general, the court may take notice of facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

(continued...)

shipment information” was sent to the USPS on October 23, 2014<sup>3</sup>, but no time is listed. The USPS Frequently Asked Questions page titled “USPS.com Tracking Updates” indicates that pre-shipment displays when information about the package has been provided to USPS, but the package has not yet been processed through the USPS network. *USPS.com Tracking Updates*, U.S. Postal Serv., <http://faq.usps.com/?articleId=220964> (last visited June 17, 2016). The petition’s tracking information further indicates that the petition was “accepted” by USPS at

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<sup>2</sup>(...continued)

Information posted on the official Web site of a government agency may be appropriate for judicial notice. *See, e.g., Marshek v. Eichenlaub*, 266 Fed. Appx. 392 (6th Cir. 2008); *Denius v. Dunlap*, 330 F.3d 919, 926-927 (7th Cir. 2003) (holding that District Court erred when it refused to take judicial notice of information on official Web site of a Federal agency that maintained medical records on retired military personnel; that fact was appropriate for judicial notice because it is not subject to reasonable dispute). In the exercise of its discretion, however, as Fed. R. Evid. 201(c) allows, the court will take judicial notice of \* \* \* [that] website”).

Federal courts have, under the authority of Fed. R. Evid. 201(c), taken sua sponte judicial notice of adjudicative facts by accessing information not just on Federal governmental agency Web sites but also on the Web sites of bar associations and that of at least one private sector organization, the Financial Accounting Standards Board (FASB), which describes itself as “the designated organization in the private sector for establishing standards of financial accounting that govern the preparation of financial reports by nongovernmental entities.” *See Jeffrey M. Goldberg & Associates, Ltd. v. Holstein*, 299 Bankr. 211, 233 n.26 (Bankr. N.D. Ill. 2003) (the court took sua sponte judicial notice of the fact that debtor “was admitted to practice law in Illinois in 1962” by looking up his record on the Attorney Registration and Disciplinary Commission, an administrative agency of the Supreme Court of Illinois), *affd. per opinion and order* (N.D. Ill., Aug. 27, 2004); *In re Charles Schwab Corp. Sec. Litig.*, 257 F.R.D. 534, 561 n.18 (N.D. Cal. 2009) (“Surprisingly, neither side offered the FASB concepts at issue for judicial notice, but because the concepts are publicly available from the FASB’s website, this order nevertheless takes judicial notice of FASB Statement of Financial Accounting Concept No. 1 pursuant to FRE 201.”)

<sup>3</sup>The Court could not glean whether USPS uses the same time-zone for pre-shipment information for all packages, or if they use the local time of the event.

8:03AM on October 23, 2014. USPS provides a status of accepted “when an item has been physically tendered to the Postal Service.” Id. (emphasis added).

While respondent does not contest our jurisdiction in this case, the Court’s jurisdiction cannot be enlarged by the parties’ agreement, or waiver, or failure to object. Romann v. Commissioner, 111 T.C. 273, 280 (1998). Accordingly, petitioners must establish that the petition was properly mailed to or filed with this Court within the required period, or this case must be dismissed for lack of jurisdiction. Premises considered, it is

ORDERED that, on or before June 23, 2016, petitioner shall file a brief addressing the jurisdiction of the Court including detailed factual information about their mailing of their petition. It is further,

ORDERED that, on or before June 23, 2016, the parties may file a brief addressing USPS pre-shipment information, information on the time that the endicia.com label was created, and any additional USPS information relating to the specific tracking information for this petition (e.g. the precise time that USPS received the pre-shipment information or the envelope containing the petition) if that party knows.

**(Signed) Robert A. Wherry, Jr.**  
**Judge**

Dated: Washington, D.C.  
June 17, 2016