

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

PETER WANG,)	
)	
Petitioner,)	
)	
v.)	Docket No. 15147-16 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On July 5, 2016, petitioner filed a petition to commence this case seeking review of a notice of determination concerning collection action, dated May 25, 2016, issued with respect to petitioner's 2009 tax year. On August 22, 2016, 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 Internal Revenue Code. On September 15, 2016, petitioner filed an Opposition To Motion To Dismiss for Lack of Jurisdiction. On September 20, 2016, respondent filed a Response To Opposition To Motion To Dismiss for Lack of Jurisdiction.

This Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). In addition, jurisdiction must be proven affirmatively, and a party invoking our jurisdiction bears the burden of proving that we have jurisdiction over the party's case. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960).

In a case seeking review of collection activity, the Court's jurisdiction to review certain collection activity of the IRS depends on the issuance of a valid notice of determination under Internal Revenue Code section 6320 or 6330 and the timely filing by the taxpayer of a petition within 30 days of that IRS determination (after the taxpayer has timely requested a collection due process hearing). Smith v. Commissioner, 124 T.C. 492, 498 (2000); I.R.C. sec. 6320(c) and 6330(d)(1); Rule 330(b), Tax Court Rules of Practice and Procedure. If a petition is timely mailed and properly addressed to the Tax Court in Washington, D.C., it will be considered timely filed. See Internal Revenue Code (I.R.C.) sec. 7502(a)(1). In order for the timely mailing/timely filing provision to apply, the envelope containing the petition must bear a postmark with a date that is on or before the last date for timely filing a petition. See I.R.C. sec. 7502(a)(2).

The record in this case reflects that the notice of determination on which this case is based was sent to petitioner by certified mail on May 25, 2016. Based on that mailing date, the last date to timely file a petition with the Tax Court was 30 days after the date of mailing, or,

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June 24, 2016. The petition was filed on July 5, 2016. The petition was received by the Court in an envelope bearing a postmark date of June 25, 2016. Both the filing and mailing dates are after the date a timely petition could be filed with the Court.

In petitioner's opposition, he stated: "The Notice of Determination was dated May 25, 2016 and said that '...you must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter.' Consequently, the 30 day period started on May 26, 2016 and the deadline for filing the petition was June 25, 2016 * * *." Petitioner correctly understood that the 30-day period started to run on May 26, 2016, but his conclusion that the last date to timely file the petition was June 25 was in error. Because May has 31 days, petitioner's calculation should have yielded a deadline of June 24, not June 25, 2016. June 25, 2016, yields a result of 31 days, rather than 30 days.

The Court has no authority to extend the 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 the petition was not filed or mailed within the required statutory period, this case must be dismissed for lack of jurisdiction.

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) L. Paige Marvel
Chief Judge**

ENTERED: **DEC 30 2016**