

UNITED STATES TAX COURT
WASHINGTON, DC 20217

RYAN M. RICHARDSON & KATHRYN M.)	
RICHARDSON,)	
)	
Petitioners,)	
)	
v.)	Docket No. 15436-18.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER

The petition in this case was filed on August 8, 2018. Petitioners seek review of a purported notice of deficiency dated May 9, 2018, allegedly issued to them for taxable year 2015. Attached as Exhibit A to that petition, is a copy of a May 9, 2018, deficiency notice allegedly issued to petitioners for 2015. That deficiency notice (Exhibit A) states that the last day for filing a timely Tax Court petition as to that deficiency notice would expire on August 7, 2018.

On October 9, 2018, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground the petition was not filed timely as to the January 31, 2018, deficiency notice issued to petitioners for taxable year 2015. Among other things, attached to respondent's motion to dismiss are: (1) as Exhibit A, a postmarked Substitute PS Form 3877, reflecting that January 31, 2018, deficiency notices for 2015 was sent by certified mail to petitioners at their last known address at 17819 West Windrose Drive, Surprise, AZ 85388 (the Surprise, AZ, address) on January 31, 2018; (2) as Exhibit B, tracking information obtained from the U.S. Postal Service showing those deficiency notices were delivered in Surprise, Arizona, on February 7, 2018, and (3) as Exhibit C, copies of those January 31, 2018, deficiency notices issued to petitioner for 2015, showing the last day for filing a timely Tax Court petition as to those notices would expire on May 1, 2018. In his motion to dismiss respondent asserts, inter alia:

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7. Respondent notes that the notice of deficiency attached [as Exhibit A] to the petition contains different dates on its first page. That notice of deficiency states that it was issued on May 9, 2018, and that the last day to file a petition with the Court is August 7, 2018. Respondent has determined that this page has been altered, presumably in a bid to secure the jurisdiction of this Court. * * *

8. Respondent reasonably believes that the dates used in the alteration were copied from a notice of deficiency issued to different taxpayers. That notice of deficiency is the basis for the Court's jurisdiction in *Leto v. Commissioner*, Docket No. 15167-18, a case that was timely filed. Like petitioners, the taxpayers in the *Leto* case are purported investors in Clean Energy Systems, LLC.

Upon due consideration, it is

ORDERED that, on or before November 1, 2018, petitioners shall file an Objection, if any, to respondent's above-described motion to dismiss. Among other things, in that Objection petitioners shall discuss and set forth fully: (1) (a) whether petitioners received the January 31, 2018, deficiency notices issued to them for 2015 attached as Exhibit C to respondent's October 9, 2018, motion to dismiss, and (b) if so, the date upon which petitioners first received those January 31, 2018, deficiency notices for 2015; and (2) the circumstances surrounding petitioners obtaining and attaching to their petition as Exhibit A, the copy of the May 9, 2018, deficiency notice allegedly issued to them for 2015. Failure to comply with this Order may result in the granting of the motion to dismiss.

(Signed) Maurice B. Foley
Chief Judge

Dated: Washington, D.C.
October 11, 2018