

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

MICHAEL T. SESTAK,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 17286-18.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER**

On October 24, 2018, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground the petition was not filed timely as to the January 9, 2017, deficiency notice issued to petitioner for taxable year 2014. On November 16, 2018, petitioner filed an Objection to respondent's motion to dismiss. On December 11, 2018, respondent filed a Response to petitioner's objection. In his Response respondent asserts, inter alia:

1. Petitioner claims that respondent's notice of deficiency was defective due to an incomplete mailing address. To support his position, petitioner argues that "the IRS was advised in writing of petitioner's incarceration and a mailing address [that included petitioner's prison registration number]." Pet's Objection at ¶ 2(b) (citing Pet's Exhibit 3).

\* \* \* \* \*

3. Petitioner also fails to inform the Court that petitioner, himself, mailed to the IRS a handwritten letter dated November 24, 2015 which provided instructions for future correspondence with petitioner. That handwritten letter is attached to the Declaration of Denise Higley at Exhibit A, Bates # 027, which is being filed currently herewith.

4. Importantly, petitioner's November 24, 2015 handwritten letter instructs the IRS to use the following mailing address:

SCP McCreary; P.O. Box 3000  
Pine Knot, KY 42635

5. Petitioner's November 24, 2015 letter provides further that "[a]ny future correspondence should be directed to the above address, which should remain my current residence until January 2018." See Higley Decl. Ex. A at Bates # 27.

6. Petitioner did not include a prison registration number or any other identifying numbers or instructions in his handwritten letter dated November 24, 2015.

As the Court of Appeals for the D.C. Circuit noted in Hom v. Commissioner, 45 F.3d 461, 467 (D.C. Cir. 1995), “When the IRS knows or should know that a deficiency notice sent to the taxpayer’s last known address will not reach the taxpayer, the IRS’s equitable obligation to exercise reasonable diligence requires more than merely mailing the notice to that address. Instead, in such a case the IRS must make a reasonable effort to ascertain an address at which the taxpayer will receive the notice.” As perhaps relevant to the instant case, I.R.M. 4.8.9.8.2.8 (07-09-2013) states, in pertinent part:

Incarcerated Taxpayers

\* \* \* \* \*

2. The address in the Letter 531, Notice of Deficiency, should be where the taxpayer is incarcerated and should reference the prisoner locator number if available.

3. For federal prison inmates, the prisoner locator number and address can be obtained from the Bureau of Prisons web site.

Upon due consideration, it is

ORDERED that, on or before January 4, 2019, respondent shall file a First Supplement to his response. In that First Supplement respondent shall set forth and fully discuss respondent’s position as to whether respondent exercised reasonable diligence in ascertaining the address to mail the notice of deficiency in this case and referencing the prisoner locator number.

**(Signed) Maurice B. Foley  
Chief Judge**

Dated: Washington, D.C.  
December 14, 2018