

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

DENISE DAVIS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 13017-18S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This deficiency case is before the Court on respondent’s motion to dismiss for lack of jurisdiction, as supplemented. Respondent maintains that the petition was not filed within the 90-day period prescribed in section 6213(a).¹ Petitioner filed a response in opposition to respondent’s motion to dismiss. As discussed in detail below, the Court will grant respondent’s motion.

Background

On March 5, 2018, respondent sent to petitioner by certified mail a notice of deficiency for the taxable year 2015. There is no dispute that the notice of deficiency was sent to petitioner’s correct or last known address. As indicated on the notice of deficiency, the 90-day period for filing a timely petition for redetermination with the Court expired on Monday, June 4, 2018.

On July 2, 2018, the Court received and filed a petition for redetermination contesting the above-mentioned notice of deficiency. The petition arrived at the Court in an envelope bearing petitioner’s return address and a Stamps.com postage stamp (stamp). There is no date on the postage stamp and the envelope does not otherwise bear a U.S. Postal Service (USPS) postmark. The envelope was not torn

¹Section references are to sections of the Internal Revenue Code, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

or damaged in any way, nor did it include any marks suggesting that delivery to the Court was somehow delayed.

As indicated, respondent filed a motion to dismiss for lack of jurisdiction. Petitioner filed a response asserting that she mailed the petition to the Court from Dayton, Ohio, on or before June 4, 2018.

By Order dated October 17, 2018, the Court directed petitioner to file a supplement to her response to respondent's motion to dismiss and (1) explain why the postage stamp affixed to the envelope bearing the petition did not include the date that the stamp was printed, and (2) provide the Court with any documentation that she might offer (including Stamps.com account records) to corroborate her statement that the petition was mailed to the Court on or before June 4, 2018. The Court also directed respondent to file a supplement to his motion to dismiss and attach thereto an affidavit or declaration regarding the normal USPS mailing time for an item of first-class mail sent from Dayton, Ohio, to Washington, D.C., taking into account the irradiation process that normally occurs before the USPS delivers mail to the Court.

On November 20, 2018, petitioner filed a supplement to her response stating that it was her understanding that the postage stamp in question lacked a date because the Stamps.com postage machine malfunctioned. Petitioner did not offer any objective evidence to corroborate her statement that the stamp was printed and her petition for redetermination was mailed to the Court on or before June 4, 2018.

On February 28, 2019, respondent filed a supplement to his motion to dismiss. Respondent reported that he was unable to obtain a declaration or affidavit from the USPS regarding the normal mailing time for an item of first-class mailed sent from Dayton, Ohio, to Washington, D.C. Respondent nevertheless maintains that petitioner has otherwise failed to show that the petition for redetermination was mailed to the Court on or before June 4, 2018, and, therefore, the Court is obliged to dismiss this case for lack of jurisdiction.

Discussion

The Tax Court is a court of limited jurisdiction and may exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). The Court's jurisdiction to redetermine a deficiency depends upon the issuance of a valid notice of deficiency and a timely-filed petition. Rule 13(a), (c); Monge v. Commissioner, 93 T.C. 22, 27 (1989); Normac, Inc. v.

Commissioner, 90 T.C. 142, 147 (1988). Section 6212(a) expressly authorizes the Commissioner, after determining a deficiency, to send a notice of deficiency to the taxpayer by certified or registered mail. Pursuant to section 6213(a), the taxpayer normally has 90 days from the date that the notice of deficiency is mailed to file a petition with the Court for a redetermination of the deficiency.

Section 7502(a) provides that timely mailing shall be treated as timely filing if a petition is delivered to the Court by the USPS after the time for its filing and the USPS postmark date affixed to the envelope is timely. Extrinsic evidence is admissible to prove the date of mailing when an envelope lacks a postmark (as is the case here) or the postmark is illegible. See Mason v. Commissioner, 68 T.C. 354, 355-356 (1975).

The petition in this case arrived at the Court on July 2, 2018--28 days after the expiration of the 90-day filing period--in an envelope bearing petitioner's return address and a Stamps.com postage stamp.² There is no date on the stamp and the envelope does not otherwise bear a USPS postmark. Although the Court offered petitioner the opportunity to provide any documentation that she might have to corroborate her statement that the petition was mailed to the Court on or before June 4, 2018, she failed to present any such records. See, e.g., Wages v. Commissioner, T.C. Memo. 2017-103. On this record, petitioner has failed to show that she mailed the petition to the Court within the time prescribed in sections 6213(a) or 7502(a). Consequently, the Court will grant respondent's motion to dismiss for lack of jurisdiction, as supplemented.³

² The period of 28 days between June 4, 2018 (the last day for filing a timely petition for redetermination in this case) and July 2, 2018 (the day the petition was delivered to the Court) is well beyond the normal USPS delivery standards between Ohio and Washington, D.C. See, e.g., Jordan v. Commissioner, T.C. Memo. 2019-15, n.2. Moreover, the envelope bearing the petition was not torn or damaged in any way, nor did it include any marks suggesting that delivery to the Court was delayed.

³ Although petitioner cannot proceed in this Court, she is not without recourse. 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 the U.S. Court of Federal Claims. See McCormick v. Commissioner, 55 T.C. 138, 142 (1970).

Upon due consideration and for cause, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction, as Supplemented, is granted and this case is dismissed for lack of jurisdiction.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

ENTERED: **MAR 06 2019**