

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DRC

THEODORE LEE CROKER, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 9070-18S.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )

**ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

This case is calendared for trial at the New York, New York, Trial Session of the Court commencing on March 9, 2020. The petition in this case was filed with the Court on May 9, 2018. Petitioner seeks review of a notice of deficiency dated February 6, 2018, for tax years 2014 and 2015. Petitioner attached a copy of the notice of deficiency to his petition.

On November 14, 2019, the Court issued an Order to Show Cause (OSC) directing respondent to file a response with the postmarked U.S. Postal Service Form 3877 or other proof of mailing, showing that the notice of deficiency was sent by certified or registered mail to petitioner at his last known address. The OSC also directed both parties to each show cause, in writing, why the Court should not dismiss the case for lack of jurisdiction on the ground the petition was not timely filed.

Respondent filed a response on December 4, 2019, and attached the postmarked U.S. Postal Service Form 3877 showing the notice of deficiency was mailed to petitioner's last known address by certified mail on February 6, 2018.

In his motion respondent contends the 90 day period for filing with the Court a petition for redetermination of the deficiency for tax years 2014 and 2015 expired on May 7, 2018; petitioner mailed his petition via FedEx Express Saver on May 7, 2018; and the petition was filed on May 9, 2018, 92 days after the mailing of the notice of deficiency. Respondent further states that the petition is considered

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untimely filed because petitioner does not get the benefit of section 7502.<sup>1</sup> Petitioner did not file a response to the Court's OSC.

For the reasons stated below, the Court concludes that the Internal Revenue Service (IRS) issued a valid notice of deficiency for tax years 2014 and 2015 to petitioner and that petitioner did not timely file a petition in this case. The Court therefore lacks jurisdiction to redetermine the deficiency for tax years 2014 and 2015.

The Court is a court of limited jurisdiction and may exercise jurisdiction only to the extent provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In a case seeking redetermination of a deficiency, the Court's jurisdiction depends, in part, on (1) the issuance by the IRS of a valid notice of deficiency to the taxpayer and (2) the timely filing of a petition by the taxpayer. See secs. 6121, 6213(a); Frieling v. Commissioner, 81 T.C. 42, 46 (1983); Brown v. Commissioner, 78 T.C. 215, 220 (1982); Rule 13(c).

Respondent presented the postmarked U.S. Postal Service Form 3877 showing the notice of deficiency was mailed to petitioner's last known address by certified mail on February 6, 2018. Petitioner has not presented any evidence or argued the notice of deficiency, dated February 8, 2018, was not valid. Therefore, the Court finds that respondent issued a valid notice of deficiency to petitioner.

Section 6213(a) provides that the petition must be filed with the Court within 90 days after the notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day). The Court has no authority to extend this 90-day period. Joannou v. Commissioner, 33 T.C. 868, 869 (1960).

Under certain circumstances, a timely mailed petition may be treated as though it were timely filed. Sec. 7502(a); sec. 301.7502-1, Proced. & Admin. Regs. In this case, the petition arrived in an envelope with a ship date of "07May18", but the petition was not sent using either the U.S. Postal Service or a designated private delivery service.

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<sup>1</sup> Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Section 7502(f) governs the treatment of private delivery services. It provides that the sending of a petition by private delivery service may be treated as timely mailed if the delivery service is one “designated by the Secretary”. From time to time, the IRS lists all private delivery services that have been designated by the Secretary under section 7502(f). Notice 2016-30, 2016-18 I.R.B. 676, effective April 11, 2016, provides a list of designated private delivery services, including FedEx First Overnight, FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day, FedEx International Next Flight Out, FedEx International Priority, FedEx International First, and FedEx International Economy. In pertinent part, Notice 2016-30 further provides that, “[o]nly the specific delivery services enumerated in this list are designated delivery services for purposes of section 7502(f).” See sec. 301.7502-1(c)(3), Proced. & Admin. Regs. FedEx Express Saver, which is the delivery service of the envelope the petition arrived in, thus is not a designated private delivery service under Notice 2016-30.

The Court, therefore, only has jurisdiction if the petition was filed with the Court within the 90-day period. See sec. 6213(a). Petitioner’s petition was filed on May 9, 2018, which was 92 days after the mailing of the notice of deficiency.

Petitioner has failed to establish and demonstrate that the Court has jurisdiction to redetermine his tax for tax years 2014 and 2015. Romann v. Commissioner, 111 T.C. 273, 280 (1998). Accordingly the Court must dismiss this case for lack of jurisdiction.

Upon due consideration, it is

ORDERED that the Court’s Order to Show Cause dated November 14, 2019, is made absolute. It is further

ORDERED that this case is dismissed for lack of jurisdiction on the ground the petition was not timely filed.

**(Signed) Diana L. Leyden  
Special Trial Judge**

ENTERED     **DEC 31 2019**