

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DRC

HAYDEN L. PATTEN, )  
)  
Petitioner, )  
)  
v. ) Docket No. 18705-18S.  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent )

**ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

This case is calendared for trial at the Seattle, Washington, Trial Session of the Court commencing on April 6, 2020. The petition in this case was filed with the Court on September 21, 2018. Petitioner seeks review of a notice of deficiency dated June 22, 2018, for tax years 2012, 2013, 2015, and 2016. On November 13, 2018, respondent filed an Answer in this case, and attached a copy of the notice of deficiency.

On February 11, 2020, 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 the June 22, 2018, deficiency notice for 2012, 2013, 2015, and 2016 upon which this case is based was sent by certified or registered mail to petitioner at his last known address on or about June 22, 2018. 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 February 19, 2020, and attached the postmarked U.S. Postal Service Form 3877 showing the notice of deficiency was mailed to petitioner at his last known address and to two other addresses listed for petitioner in respondent's administrative file: P.O. Box 266, Deming, Washington, 98244-0266; 1225 E. Sunset Dr. Suite 145, Bellingham, Washington, 98226; and 1108 E. Beachview Pl., Bellingham, Washington, 98226, by certified mail on June 22, 2018. Respondent states that the notice of deficiency addressed to petitioner at the last known address of P.O. Box 266, Deming, Washington, 98244, was returned to sender "Attempted, Not Known, Unable to Forward" by the U.S. Postal

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Service and received on July 2, 2018. Additionally, the notice of deficiency addressed to petitioner at 1108 East Beachview Place, Bellingham, Washington, 98226, was returned to sender, “Not Deliverable as Addressed, Unable to Forward” by the U.S. Postal Service and received on August 15, 2018.

Respondent states that the administrative file does not indicate that the notice of deficiency addressed to petitioner at 1225 E. Sunset Dr. Suite 145, Bellingham, Washington, 98226, was returned to respondent.

In his response, respondent contends the 90-day period for filing with the Court from the notice of deficiency expired on September 20, 2018, which date was not a Saturday, Sunday, or legal holiday in the District of Columbia; petitioner mailed his petition on September 19, 2018; and the petition was filed September 21, 2018. Respondent further states that the petition in this case was delivered by FedEx Express Saver, a private delivery service not designated by Notice 2015-38<sup>1</sup> as a private delivery service for the purpose of timely mailing treated as timely filing under I.R.C. section 7502(f).<sup>2</sup> Therefore, respondent argues that the petition was not timely filed and as such the Court lacks jurisdiction.

On March 3, 2020, petitioner filed a Response To Order Dated 2/11/2020. Petitioner’s response, by and through his attorney, James Sturdevant, acknowledges respondent mailed out the notice of deficiency on June 22, 2018, and that the petition was filed on September 21, 2018, which is 91 days from the date of mailing. Mr. Sturdevant further acknowledges he was aware of the 90-day filing requirement. Mr. Sturdevant meant to file the petition on the 90th day and did not intend to invoke the “filing upon mailing rule,” but due to an office slip-up, the petition was sent FedEx Express rather than FedEx Overnight.

For the reasons stated below, the Court concludes that the Internal Revenue Service (IRS) issued a valid notice of deficiency for tax years 2012, 2013, 2015, and 2016 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 2012, 2013, 2015, and 2016.

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<sup>1</sup> Notice 2015-38, 2015-21 I.R.B. 21, was updated by Notice 2016-30, 2016-18 I.R.B. 676, effective April 11, 2016.

<sup>2</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.

This 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 June 22, 2018. Petitioner has not presented any evidence or argued the notice of deficiency, dated June 22, 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). In this case, the time for filing a petition with this Court expired on September 20, 2018. However, the petition was not filed within that period.

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 "09/19/18". However, the petition was not sent using either the U.S. Postal Service or a designated private delivery service.

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 using the U.S. Postal Service or a designated private delivery service with the Court within the 90-day period. See sec. 6213(a). Petitioner's petition was filed using a delivery service other than the U.S. Postal Service or a designated private delivery service on September 21, 2018, which was 91 days after the mailing of the notice of deficiency.

Petitioner asks the Court to find jurisdiction on equitable grounds because of the delay in raising the timely filing issue. Petitioner argues that he and his attorney have invested a lot of time and energy to prepare for trial and to attempt to settle this case. While the Court sympathizes with petitioner's situation, the Court has no authority to extend that period provided by law for filing a petition "whatever the equities of a particular case may be and regardless of the cause for it not being filed within the required period." Axe v. Commissioner, 58 T.C. 256, 259 (1972). Petitioner has failed to establish and demonstrate that the Court has jurisdiction to redetermine his tax for years 2012, 2013, 2015, and 2016. 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 February 11, 2020, 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: **MAR 05 2020**