

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

MUHAMMAD ISHAQ & RAHAT SULTAN)
ISHAQ,)
)
Petitioner(s),) **CT**
)
v.) Docket No. 13309-19.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On July 17, 2019, petitioners filed a petition seeking redetermination of their liability for the 2017 tax year. Petitioners did not attach a notice of deficiency to their petition, and neither party has been able to locate and produce a copy of the notice of deficiency. On February 13, 2020, respondent filed a Motion to Dismiss for Lack of Jurisdiction. Because a notice of deficiency is necessary for the Court to establish that it has jurisdiction, we will grant respondent’s motion and dismiss the case.

In their petition petitioners checked the box stating that they were disputing a “notice of deficiency” and listed the date of the notice as June 28, 2019. The document they attached to their petition was dated June 28, 2019, but it was not a notice of deficiency. Rather, it was a Letter 555 which stated, “We previously sent you a Notice of Deficiency.” The letter indicated that petitioners had submitted additional information to the IRS but that the IRS “did not make changes to the tax increase we proposed previously because the information you sent us did not justify a change.” The letter informed petitioners that “[t]he last date to petition the Tax Court is July 19, 2019.” This suggests that a notice of deficiency was sent to petitioners 90 days previously, i.e., on April 19, 2019. The letter showed a \$15,821 balance due (including penalties and interest accrued to June 28, 2019).

After receiving the petition and noting the missing notice of deficiency, this Court issued an order dated December 4, 2019, directing respondent to file a response attaching a copy of the notice of deficiency upon which this case is based.

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On December 20, 2019, respondent's counsel filed a response representing that she had not located a copy of the notice of deficiency but believed one had been issued on April 19, 2019; she stated that she was attempting to locate a copy either internally or through petitioners' accountant. Respondent concurrently filed a Motion for Extension of Time to locate and submit a copy of the notice of deficiency. We granted that motion and directed respondent to submit a copy of the missing notice by February 18, 2020.

On February 13, 2020, still having not located the notice, respondent filed a Motion to Dismiss for Lack of Jurisdiction. We directed petitioners to respond to that Motion by March 23, 2020, advising that, if petitioners or their return preparer "can locate a copy of a notice of deficiency issued to petitioners for their taxable year 2017, they should attach a copy of that notice to their response." Petitioners did not file a response, and we subsequently extended the time for their response to June 10, 2020. Petitioners filed no response by that date or subsequently. On July 28, 2020, respondent made a supplemental submission stating that he was still unable to locate a copy of a notice of deficiency for 2017.¹

This Court is a court of limited jurisdiction and may exercise jurisdiction only to the extent expressly provided by statute. I.R.C. sec. 7442; Naftel v. Commissioner, 85 T.C. 527, 529 (1985). In a deficiency case such as this, our jurisdiction depends on (1) the issuance by the Commissioner of a notice of deficiency and (2) a timely filed petition. Rule 13(a), (c), Tax Court Rules of Practice and Procedure; Monge v. Commissioner, 93 T.C. 22, 27 (1989); Normac, Inc. v. Commissioner, 90 T.C. 142, 147 (1988). A petition is not complete unless a copy of the relevant notice of deficiency is attached to it, and the failure of a petition to satisfy that requirement may result in a dismissal of the case. See Rule 34(a) and (b)(8), Tax Court Rules of Practice and Procedure; Frausto v. Commissioner, T.C. Memo. 2016-106. Jurisdiction must be proven affirmatively, and a party invoking our jurisdiction bears the burden of proving that we have jurisdiction over the party's case. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960).

¹In his supplemental response respondent noted that the IRS had issued to petitioners identical Notices CP21E dated February 24, 2020, which showed that they had a balance due of zero for 2017. Respondent explained that these Notices reflected the reversal of a premature assessment of the 2017 liability that the IRS had made on September 2, 2019. According to respondent, the Notices CP21E do not constitute a determination by the IRS that petitioners are not liable for a deficiency and penalty for 2017. Respondent accordingly believes that a ruling on his Motion to Dismiss for Lack of Jurisdiction "remains necessary to resolve this case."

Respondent may have sent petitioners a notice of deficiency on or around April 19, 2019. However, respondent has been unable to locate a copy of that notice despite multiple attempts to do so, and neither petitioners nor their accountant appear to have located a copy either. Because the parties have not produced a notice of deficiency over which we have jurisdiction, we will dismiss the case.

In consideration of the foregoing, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction, filed February 13, 2020, is granted and this case is dismissed for lack of jurisdiction.

**(Signed) Albert G. Lauber
Judge**

ENTERED: **JUL 31 2020**