

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

ARTUR ROBERT SMUS,)
)
Petitioner(s),)
)
v.) Docket No. 13949-19.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On July 9, 2020, respondent filed with the Court a Motion to Dismiss for Lack of Jurisdiction. Respondent’s motion indicates that petitioner filed his petition on July 24, 2019, which is 91 days after the Notice of Deficiency in the case was sent. The petition needed to be postmarked by July 23, 2019 to be timely under I.R.C. sections 6213(a) and 7502. By Order dated July 16, 2020, the Court directed petitioner to file a written response to respondent’s Motion to Dismiss for Lack of Jurisdiction on or by August 17, 2020, and set respondent’s Motion to Dismiss for Lack of Jurisdiction for remote hearing on September 28, 2020, at 10:00 a.m. MDT. The Court advised petitioner that failure to comply with the terms of the Order or failure to appear at the remote hearing on September 28, 2020, may result in the Court granting respondent’s motion. Petitioner did not file a response by the August 17, 2020 deadline.

This case was called for remote hearing at the Trial Session of the Court on September 28, 2020, where Denver, Colorado, was the place of trial. There was no appearance by or on behalf of petitioner via Zoomgov nor by calling in by phone. Counsel for respondent appeared and was heard. Respondent’s counsel outlined her many unsuccessful attempts to contact petitioner. Respondent’s counsel also explained the

basis for granting the motion. The Court likewise made multiple attempts to reach petitioner prior to the hearing attempting to set up a joint call on the motion with respondent's counsel. The Court was equally unsuccessful. While petitioner did not appear at the Court's remote hearing on September 28, 2020, petitioner electronically filed Petitioner's Response to Motion to Dismiss for Lack of Jurisdiction with the Court on September 28, 2020, ten minutes prior to the scheduled remote hearing (Docket Index Entry No. 0010).

Petitioner's late filed response indicates that to his recollection, he petitioned the Court on the evening of July 23, 2019, but that FedEx didn't ship out packages until the next morning and therefore the petition was postmarked July 24, 2019. Additionally, the response indicates that petitioner has looked for his FedEx receipt to provide proof that his petition was timely, yet has been unsuccessful in locating that receipt to share with the Court. Petitioner's late response to this Court's Order and his failure to make an appearance at his hearing is reason enough for the Court to grant respondent's motion; yet petitioner is admitting his return was postmarked and mailed after the 90 day period for filing a Tax Court petition set forth in I.R.C. section 6213(a) that would otherwise give us jurisdiction to hear his case.

After due consideration and for cause, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction, filed on July 9, 2020, is granted, and this case is dismissed for lack of jurisdiction upon the ground that the petition was not filed within the time prescribed by I.R.C. section 6213(a), as it was filed late even given the benefit of the timely mailing rule set forth in I.R.C. section 7502.

**(Signed) Elizabeth A. Copeland
Judge**

ENTERED: **OCT 01 2020**