

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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| RICHARD BARNHART & MELISSA A. |) | |
| BARNHART, |) | |
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| Petitioners, |) | |
| |) | |
| v. |) | Docket No. 5783-19S. |
| |) | |
| COMMISSIONER OF INTERNAL REVENUE, |) | |
| |) | |
| Respondent |) | |
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ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On May 7, 2019, respondent filed in the above-docketed case a Motion To Dismiss for Lack of Jurisdiction, on the ground that the petition herein was not filed within the time prescribed by section 6213(a) or 7502 of the Internal Revenue Code (I.R.C.). Respondent attached to the motion a copy of a certified mail list, as evidence of the fact that a notice of deficiency for the taxable year 2015, dated September 24, 2018, had been sent to petitioners by certified mail on September 20, 2018.

The petition was filed with the Court on March 27, 2019, which date is 184 days after the date of the notice of deficiency for tax year 2015 mailed to petitioners. The petition was received by the Court in an envelope bearing U.S. Postal Service (USPS) postage dated March 25, 2019, which date is 182 days after the date of the notice of deficiency. Additionally, the petition had been sent by Priority Mail 2-Day, and USPS tracking information is consistent in reflecting March 25, 2019, as the first entry, labeled "USPS in possession of item".

This Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In a case seeking the redetermination of a deficiency, the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Brown v. Commissioner, 78 T.C. 215, 220 (1982). In this regard, section 6213(a), I.R.C., provides that the petition must be filed with the Court within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day).

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The Court has no authority to extend this 90-day (or 150-day) period. Joannou v. Commissioner, 33 T.C. 868, 869 (1960). However, a petition shall be treated as timely filed if it is filed on or before the last date specified in such notice for the filing of a Tax Court petition, a provision which becomes relevant where that date is later than the date computed with reference to the mailing date. Sec. 6213(a), I.R.C. Likewise, if the conditions of section 7502, I.R.C., are satisfied, a petition which is timely mailed may be treated as having been timely filed.

In the present case, the time for filing a petition with this Court expired on December 24, 2018. However, the petition was not filed within that period.

Petitioners were served with a copy of respondent's motion to dismiss and, on May 28, 2019, filed an objection. Therein, petitioners did not deny the jurisdictional allegations set forth in respondent's motion and did not allege that petitioners had filed before the statutory deadline. Rather, petitioners seemed to suggest that circumstances impacting their efforts to resolve the 2015 tax matters administratively with the Internal Revenue Service (IRS) should allow this case now to proceed before the Court. The objection took the position that their pursuit of agency assistance had been hampered by the government shutdown. Specifically, they stated: "During the time of the shutdown, Petitioners were working with various Internal Revenue Service personnel, including the Taxpayer Advocate office." The objection then closed with a plea that motion to dismiss be denied.

Unfortunately, while the government shutdown can serve as a premise for relief in narrowly defined circumstances, as set forth in Guralnik v. Commissioner, 146 T.C. 320 (2016), the scenario here falls well outside those parameters. Most notably, the Tax Court remained open and operational through December 28, 2018, after the December 24, 2018, due date for the petition. Moreover, regardless of the effect of any shutdown, efforts to work with the IRS administratively never alter the deadline for a petition.

To the extent that petitioners' objection shows that before and/or after receiving the notice of deficiency, petitioners endeavored to communicate with the IRS, the law is well settled that once a notice of deficiency has been issued, further administrative contact or consideration does not alter or suspend the running of the 90-day period. Even confusing IRS responses or correspondence during the administrative process cannot override the clearly stated deadline in the statutory notice of deficiency. Such confusion is not uncommon given that the IRS frequently treats as separate processes or proceedings what taxpayers view as a single dispute. Taxpayers not infrequently have also conflated this Court with an IRS unit, but the IRS is a completely separate and independent entity from the Tax Court.

Although section 7502, I.R.C., allows a timely mailed petition to be treated as timely filed, that section mandates that the envelope bearing the petition be "properly addressed to the agency, officer, or office with which the document is required to be filed." Sec. 7502(a)(2)(B), I.R.C. A petition seeking redetermination of a deficiency must be filed with this Court and not the IRS. Sec. 6213(a), I.R.C. Hence, the mailing (or faxing) of a petition, correspondence, return, or other documentation to the IRS is not sufficient to confer jurisdiction on this Court. Axe v. Commissioner, 58 T.C. 256 (1972). The statute is clear, and this Court must follow it. Estate of Cerrito v. Commissioner, 73 T.C. 896 (1980). The Court would also note that a notice

of deficiency issued to a taxpayer states on its face the last day to petition the Tax Court (not the IRS) and provides expressly in multiple places that the filing period extends 90 days from the date of the letter. The first pages of the notice are likewise explicit in providing that petitions must be filed with the U.S. Tax Court and in giving the Court's address as "400 Second Street, NW, Washington, DC 20217". With these clear rules regarding the inefficacy of written correspondence to the IRS, it is clear that efforts to contact the IRS by phone can offer no greater protection.

Thus, while the Court is sympathetic to petitioners' situation and understands the unintentional character of the inadvertence here, as well as the challenges of the circumstances faced and the good faith efforts made, governing law recognizes no applicable exceptions that would allow them to proceed in this judicial forum. As a Court of limited jurisdiction, the Court is unable to offer any remedy or assistance when a petition is filed late. Rather, the Court is barred from considering in any way petitioners' case or the correctness of their claims. Unfortunately, controlling law permits no reasonable cause or other relevant exception to the statutory deadline, and the allegation that the petition was sent to the Tax Court three months late remains unrebutted.

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 its not being filed within the required period." Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, since petitioners has failed to establish that the petition was mailed to or filed with this Court within the required 90-day period, this case must be dismissed for lack of jurisdiction. The Court would, however, encourage petitioners to continue working administratively through the IRS, which in certain circumstances may be able to offer alternative avenues for relief, not dependent on the existence of a Tax Court case, such as audit reconsideration or a refund action.

The premises considered, it is

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

(Signed) Maurice B. Foley
Chief Judge

ENTERED: **JUN 04 2019**