

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

MARIJA JANJIC,)
)
 Petitioner,)
)
 v.) Docket No. 2003-19.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)
)
)
)
)
)
)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On April 5, 2019, respondent filed in the above-docketed matter a Motion To Dismiss for Lack of Jurisdiction, on the ground that the petition in this case was not timely filed within the period prescribed by section 6213(a) or 7502 of the Internal Revenue Code (I.R.C.). Respondent attached to the motion copies of a notice of deficiency and corresponding registered mail list, as evidence of the fact that such notice of deficiency for the taxable year 2016, dated July 30, 2018, had been sent to petitioner by registered mail on July 30, 2018.

The petition was filed with the Court on January 28, 2019, which date is 182 days after the date of the notice of deficiency for 2016 mailed to petitioner. The petition was received by the Court in an envelope that bears a U.S. Postal Service (USPS) postmark dated January 14, 2019, which date is 168 days after the date of the notice of deficiency.

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). 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 27, 2018, as the 150-day period applied on account of petitioner's residence overseas in Serbia. However, the petition was not filed within that period.

Petitioner was served with a copy of respondent's motion to dismiss and, on May 21, 2019, filed an objection, with attachments. Therein, petitioner did not deny the jurisdictional allegations set forth in respondent's motion and in fact conceded that petitioner had not filed before the statutory deadline, explaining as follows with regard to timeliness:

Upon receiving of the IRS Notice of Deficiency, I asked the NIH administration to send me the 1042-S form, so that I could contest the Notice. Unfortunately, the NIH payroll mailed the form to Russian Federation, instead of my country residence - Republic of Serbia. This caused a very long delay. The form 1042-S finally reached me on December 21, 2018. By that time, I had plans to visit the US, so I decided to address the issue in-person at the local IRS Office in Rockville, MD.

Unfortunately, I could not exercise my right to petition the notice due to the ongoing Government shutdown. The IRS shutdown occurred before my arrival to the US, and it stayed in effect until after the date of my departure on 01/15/19. At that time, I was not aware of the fact that the US Tax Court in D.C. was operational.

The balance of the objection focused on petitioner's substantive position concerning the nature of her position with and compensation from the National Institute of Health (NIH) during 2016 as a visiting post-doc fellow. The document then closed with petitioner's plea that the Court would nonetheless consider the case, in light of the complications of living internationally, and would thereby allow petitioner to correct what was believed to be mistake on the part of the Internal Revenue Service (IRS). A response from respondent to petitioner's objection followed on June 4, 2019.

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 outside those parameters. Most notably, the Tax Court remained open and operational through December 28, 2018, **after** the December 27, 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.

Thus, while the Court is deeply sympathetic to petitioner's situation and understands the unintentional character of the inadvertence here, as well as the serious challenges imposed by petitioner's personal circumstances and the good faith of the efforts undertaken to address the matter, the fundamental nature of the filing deadline precludes the case from going forward. 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 petitioner's case, petitioner's evidence, or the correctness of petitioner's claims. Unfortunately, governing law recognizes no reasonable cause or other applicable exception to the statutory deadline, and the allegation that the petition was sent 18 days late remains un rebutted.

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 petitioner has failed to establish that the petition was properly mailed to or filed with this Court within the required period, this case must be dismissed for lack of jurisdiction. The Court would, however, strongly encourage petitioner, despite the inconvenience, to consider and/or continue working administratively through the IRS, which, being entirely separate from the Tax Court, 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 14 2019**