

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

Claudette Mercedes McCoy,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 25941-13S.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

On December 30, 2013, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground the petition was not timely filed. On January 23, 2014, petitioner filed an Opposition to respondent’s motion to dismiss.

The record reflects that respondent mailed a notice of deficiency to petitioner for 2012 on July 15, 2013. The 90-day period for filing a timely petition with the Court under I.R.C. section 6213(a) expired on October 15, 2013. The petition, filed November 4, 2013, was handdelivered and received at the Court on November 4, 2013--20 days beyond the 90-day filing period.

In her Opposition petitioner asserts that she was unable to file her Tax Court petition timely due to the suspension of Tax Court operations due to the Government shutdown. Among, other things, petitioner relates that: (1) on October 3, 2013, petitioner’s counsel visited the eAccess section of Court’s website at [www.ustaxcourt.gov](http://www.ustaxcourt.gov) to initiate filing a Tax Court petition as to the notice of deficiency for 2012 issued to petitioner, but counsel learned the Tax Court had temporarily suspended its eFiling system,<sup>1</sup> (2) a petition in paper form was later prepared and, on or about October 11, 2013, petitioner’s counsel took that petition to the Court’s courthouse at 400 Second Street, N.W., Washington, D.C. 20217, but counsel learned the Court was closed due to the Government shutdown; and (3) after learning the Government shutdown had ended, petitioner’s counsel then handdelivered the petition in this case to the Court in Washington, D.C., on November 4, 2013. Petitioner asks the Court to excuse her late filing of the petition because, petitioner claims, that petition could not have been filed timely by October 15, 2013.

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<sup>1</sup>Contrary to petitioner’s suggestion, petitions are not eligible for electronic filing. Rather, petitions must be filed with the Court in paper form. See Tax Court Rule 26(b)(1).

Contrary to petitioner's argument, however, the Court issued a Notice on October 1, 2013, describing the suspension of Tax Court operations because of the Federal Government shutdown beginning on October 1, 2013. See

[http://www.ustaxcourt.gov/Shutdown\\_Public\\_Statement\\_10113.pdf](http://www.ustaxcourt.gov/Shutdown_Public_Statement_10113.pdf). That October 1, 2013, Notice states inter alia:

**Suspension of Tax Court Operations**  
**During Government Shutdown**

This notice describes the suspension of Tax Court operations because of the Federal government shutdown beginning on October 1, 2013.

\* \* \* \* \*

**Statutory Filing Deadlines**

The Court lacks authority to extend statutory filing deadlines imposed in the Internal Revenue Code (I.R.C.) For example, I.R.C. section 6213(a) provides a taxpayer must file a petition with the Court to redetermine a deficiency within 90 days after the mailing of a notice of deficiency \* \* \* . Hand-delivery to the Courthouse is not available during the period the Court is closed due to a Government shutdown. Taxpayers must comply with the statutory deadlines by timely mailing a petition to the Court. Timeliness of mailing of the petition is determined by the United States Postal Service's postmark or the delivery certificate of an approved private express company.

Consequently, petitioner should still have been able to file her petition timely with the Court pursuant to the timely mailing/timely filing provisions of I.R.C. section 7502.

As discussed above, the record reflects the petition was not filed timely as to the notice of deficiency for 2012. The Court has no authority to extend the statutory period for filing a timely petition. Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, we are obliged to dismiss this case for lack of jurisdiction.

Petitioner cannot prosecute a case in this Court. However, petitioner may pay the tax, file a claim for refund with the Internal Revenue Service, and if the claim is denied, sue for a refund in the Federal district court or the U.S. Court of Federal Claims. See McCormick v. Commissioner, 55 T.C. 138, 142 (1970).

Upon due consideration, 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) Michael B. Thornton**  
**Chief Judge**

ENTERED: **FEB 03 2014**