

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PHILIP A. DUGGAN,)	
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Petitioner,)	
)	
v.)	Docket No. 4100-15 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER AND ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On June 4, 2015, 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 statutory period prescribed by section 6320(c), 6330(d), or 7502 of the Internal Revenue Code (I.R.C.). Respondent attached to the motion copies of United States Postal Service tracking information, as evidence of the fact that notices of determination concerning collection action with respect to the taxable years 2008, 2010, 2012, and 2013 were sent to petitioner by certified mail on January 7, 2015, and were delivered on January 12, 2015.

The petition herein was filed with the Court on February 11, 2015, which date is 35 days after the notices of determination were mailed to petitioner. The petition was received by the Court in an envelope that bears a postmark dated February 7, 2015, which date is 31 days after the mailing of the notices of determination.

In a case seeking review of a determination under section 6320 or 6330, I.R.C., the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. Rule 330(b), Tax Court Rules of Practice and Procedure; Weber v. Commissioner, 122 T.C. 258 (2004); McCune v. Commissioner, 115 T.C. 114 (2000). In this regard, section 6330(d)(1), I.R.C., specifically provides that the petition must be filed with the Tax Court within 30 days of the determination. The Court has no authority to extend this 30-day period. Weber v. Commissioner, 122 T.C. at 263; McCune v. Commissioner, 115 T.C. at 117-118. However, 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 February 6, 2015. However, the petition was not filed within that period.

Petitioner was served with a copy of respondent's motion to dismiss and, on June 17, 2015, filed an opposition. Therein, petitioner took the position that the petition was timely filed under section 7502, I.R.C., and Rule 25(a) of the Tax Court Rules of Practice and Procedure. Specifically, petitioner summarized his interpretation as follows:

The Letter 3193 (11-2013) seems to deal with a simple straightforward issue about filing within 30 days. It says: "you must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of the letter". Since the date on the letter was January 7, 2015, the 30-day period begins or starts on January 8, 2015. So I start the count at January 8 and one day or one count from January 8 is January 9, or count one, and 30 days from January 8 is February 7, 2015, the date of mailing of the petition. In other words, January 8 is the starting line or beginning line or day zero and we count 30 days forward which is Saturday February 7, 2015.

Based on the just-quoted analysis, petitioner contended that the deadline for mailing a petition did not expire until Monday, January 9, 2015, such that the petition postmarked two days earlier was timely. Although petitioner acknowledged an alternative interpretation of Rule 25(a)(1) wherein January 8, 2015, would be counted as day one, he nonetheless argued that if his construction were not accepted, then Rule 25(a)(1) was defective as ambiguous.

However, petitioner's attempts to insert ambiguity into Rule 25(a)(1) are belied by decades of this Court's jurisprudence dismissing as untimely petitions mailed or filed one day late, where the day after the mailing of the underlying notice was counted as day one (not day zero). See, e.g., Slattery v. Commissioner, T.C. Memo. 1995-274; Dovidio v. Commissioner, T.C. Memo. 1991-211; Haaland v. Commissioner, T.C. Memo. 1984-33; Bumpass v. Commissioner, T.C. Memo. 1981-103; Blank v. Commissioner, 76 T.C. 400 (1981). Similarly, Appiah v. Commissioner, T.C. Memo. 1996-170, sets forth in detail the computation of time for purposes of Rule 25(a)(1) and rejects an analogous argument by the taxpayer there to add an extra day. Notable also in this regard is Appleton v. Commissioner, T.C. Memo. 2008-231, a collection proceeding wherein the Court parsed both section 6330(d), I.R.C., which mandates that an appeal to the Tax Court be filed "within 30 days of a determination", and the language of Rule 25. There, the notice of determination was mailed on February 29, 2008, and the Court stated: "The last date 'within 30 days' of Friday, February 29, 2008, was March 30, 2008".

Applying such well-settled principles to the instant case, the deadline to file a timely petition was February 6, 2015, as noted above.

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). Thus, since

the petition was not filed or mailed within the required statutory period, this case must be dismissed for lack of jurisdiction.

The premises considered, it is

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction, filed June 4, 2015, is granted, and this case is dismissed for lack of jurisdiction. It is further

ORDERED that petitioner's Motion for Summary Judgment, filed April 17, 2015, as supplemented, is denied as moot.

**(Signed) Michael B. Thornton
Judge**

ENTERED: **JUN 26 2015**