

UNITED STATES TAX COURT

WASHINGTON, DC 20217

PAUL A. POTTGEN AND JUDY G. POTTGEN,)

Petitioners)

v.)

COMMISSIONER OF INTERNAL REVENUE,)

Respondent)

Docket No. 1410-15L.

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This case is presently calendared for trial at the session of the Court scheduled to commence at Pittsburgh, Pennsylvania, on May 23, 2016.

The petition in this case was filed on January 16, 2015, seeking review of a notice of determination concerning collection action dated December 10, 2014, sustaining the Notice of Federal Tax Lien and proposed levy for petitioners' taxable year 2007. The 30-day period for timely filing a petition with the Court from a notice of determination expired on January 9, 2015, which date was not a Saturday, Sunday, or legal holiday in the District of Columbia. On January 16, 2015, the petition was received by the Court in a mailing envelope bearing a U.S. Postal Service postmark date of January 10, 2015.

On January 11, 2016, respondent filed a motion to dismiss for lack of jurisdiction on the ground that the petition was not filed within the time prescribed by I.R.C. section 6330(d) or section 7502. In the motion to dismiss, respondent states that the notice of determination concerning collection action on which this case is based was sent to petitioners individually at their last known address by certified mail on December 10, 2014, "as shown by the postmark date stamped on the Certified Mail receipt and the United States Postal Service tracking information". Attached to the motion to dismiss are copies of U.S. Postal Service Certified Mail Receipts bearing a postmark stamp date of December 10, 2014.

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Petitioners filed a response to respondent's motion to dismiss on February 12, 2016. In it, petitioners acknowledge that the mailing date of the notice of determination is December 10, 2014; however, petitioners argue that "the final date for filing a petition was January 10, 2015, which is 30 consecutive days from December 11, 2014," and therefore the petition is considered timely filed upon mailing on January 10, 2015.

The Tax Court is a court of limited jurisdiction and may exercise jurisdiction only to the extent expressly authorized by Congress. Naftel v. Commissioner, 85 T.C. 527, 529 (1985); Breman v. Commissioner, 66 T.C. 61, 66 (1976). In a case seeking review of a determination under section 6320 or 6330, the Court's jurisdiction to review certain collection activity of the Internal Revenue Service depends, in part, on the timely filing of a petition by the taxpayer. Smith v. Commissioner, 124 T.C. 36, 38-39 (2005); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); secs. 6320(c), 6330(d)(1); Rule 330(b), Tax Court Rules of Practice and Procedure.

A timely mailed petition may be treated as though it were timely filed. Sec. 7502(a). Thus, if a petition is received by the Court after the expiration of the period for filing a petition, it is nevertheless deemed to be timely if the date showing on the envelope in which the petition was mailed is within the time prescribed for filing. Sec. 7502(a); sec. 301.7502-1, *Proced. & Admin. Regs.*

Our review of the record establishes the following relevant facts: (1) the notice of determination dated December 10, 2014, was sent to petitioners' last known address by certified mail on December 10, 2014; (2) the 30-day period for filing a petition with this Court expired on January 9, 2015; and (3) the petition in this case was mailed to the Court on January 10, 2015, one day late. Petitioners contend that the period for filing a petition expired on January 10, 2015, rather than January 9, 2015. Section 6330(d)(1) 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. 258, 263 (2004); McCune v. Commissioner, 115 T.C. 114, 117 (2000).

As discussed above, the record reflects that the petition was not filed timely. Accordingly, we must dismiss this case for lack of jurisdiction.

The premises considered, it is

ORDERED: That respondent's Motion to Dismiss for Lack of Jurisdiction, filed January 11, 2016, is granted, and this case is dismissed for lack of jurisdiction.

**(Signed) Robert P. Ruwe
Judge**

ENTERED: MAR - 4 2016