

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SHARI RENEE NAUFLETT,)	
)	
Petitioner,)	
)	
v.)	Docket No. 24427-15.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On November 23, 2015, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground that the petition was not filed within the time prescribed by the Internal Revenue Code. On December 28, 2015, petitioner filed a Notice of Objection to that motion to dismiss. On March 3, 2016, respondent filed a First Supplement to the motion to dismiss. Although the Court directed petitioner to file an objection, if any, to respondent's First Supplement, petitioner failed to do so.

The record in this case reflects that respondent issued to petitioner three notices of determination, dated June 17, 2015, denying petitioner's request for relief from joint and several liability with respect to tax years 2002, 2003, 2004, and 2008. The notices of determination stated: "If you disagree with our decision, you can file a petition with the United States Tax Court to review our denial. You must file your petition within 90 days from the date of this letter." Petitioner filed a petition seeking review of those notices of determination on September 25, 2015. The petition was received by the Court in an envelope bearing a postmark date of September 22, 2015. Respondent did not issue to petitioner any other notices of deficiency or notices of determination sufficient to confer jurisdiction on this Court.

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 addition, jurisdiction must be proven affirmatively, and a taxpayer invoking our jurisdiction bears the burden of proving

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that we have jurisdiction over the taxpayer's case. See Fehrs v. Commissioner, 65 T.C. 346, 348 (1975); Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 180 (1960). In a case based upon a notice of determination that disallows a request for relief from joint and several liability on a joint return, the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. Internal Revenue Code sec. 6015(e); Rule 320(b), Tax Court Rules of Practice and Procedure. Jurisdiction under I.R.C. section 6015(e) depends, in part, on issuance of a final determination by the IRS under that section or the failure by the IRS to issue a determination within 6 months of a request for relief from joint and several liability on a joint return. I.R.C. sec. 6015(e)(1)(A). As relevant here, when a final determination is issued, I.R.C. section 6015(e)(1) specifically provides that the petition must be filed with the Tax Court within 90 days of the determination. If a petition is timely mailed and properly addressed to the Tax Court in Washington, D.C., it will be considered timely filed. See I.R.C. sec. 7502(a)(1). In order for the timely mailing/timely filing provision to apply, the envelope containing the petition must bear a postmark with a date that is on or before the last date for timely filing a petition. See I.R.C. sec. 7502(a)(2). Based on the mailing date of the notices of determination upon which this case is based, the last day petitioner could timely file or mail a petition was September 15, 2015. Here, both the filing and mailing dates of the petition were after the last date a petition could be timely filed.

In petitioner's objection to the motion to dismiss, she contends that an IRS employee provided her with erroneous information about the deadline for timely filing a petition and that she relied upon that information. However, it is well settled that where the Commissioner's representatives provide erroneous advice based upon a mistaken interpretation of the law, courts and the Commissioner are not bound by the agent's statements and must instead follow the applicable statutes, regulations, and caselaw. See Dixon v. United States, 381 U.S. 68, 72-73 (1965); Auto. Club of Mich. v. Commissioner, 353 U.S. 180, 183 (1957); Neri v. Commissioner, 54 T.C. 767, 771-772 (1970).

The record establishes that the petition in this case was not timely filed. While the Court is sympathetic to petitioner's circumstances, we have no authority to extend the period for timely filing set by Congress. Axe v. Commissioner, 58 T.C. 256, 259 (1972); Joannou v. Commissioner, 33 T.C. 868, 869 (1960). However, although petitioner may not prosecute a case in this Court, petitioner may continue to pursue administrative resolution of the 2012 tax liability directly with the IRS. Also, if feasible, petitioner may pay the determined amounts, file a claim for refund with the IRS and then (if the claim is denied or not acted on for

six months), bring a suit for refund in the appropriate Federal district court or the U.S. Court of Federal Claims. See McCormick v. Commissioner, 55 T.C. 138, 142 n.5 (1970).

Upon due consideration, it is

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

**(Signed) L. Paige Marvel
Chief Judge**

ENTERED: **AUG 09 2016**