

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SEMYYA LANISE CUNNINGHAM,)	
)	
Petitioner,)	
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v.)	Docket No. 14090-16 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On November 4, 2016, 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 6330(d) or 7502 of the Internal Revenue Code (I.R.C.). Respondent attached to the motion copies of a postmarked certified mail list and U.S. Postal Service tracking information, as evidence of the fact that a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code for the taxable years 2010, 2011, 2013, and 2014 was sent to petitioner by certified mail on May 16, 2016, and was delivered on June 6, 2016. Notification of the certified item’s availability had initially been left on May 19, 2016, when “No Authorized Recipient Available”.

The petition herein was filed with the Court on June 20, 2016, which date is 35 days after the notice of determination was mailed to petitioner. The petition was received by the Court in an envelope that bears a U.S. Postal Service postmark dated June 16, 2016, which date is 31 days after the mailing of the notice of determination. The petition had also been sent by certified mail, and U.S. Postal Service tracking information for the certified item confirms the June 16, 2016, mailing.

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 June 15, 2016. However, the petition was not filed within that period.

Petitioner was served with a copy of respondent's motion to dismiss and, on December 2, 2016, filed a notice objection. Therein, petitioner took the position that the petition was timely filed under sections 6330(d) and 7502, I.R.C., and per the instruction in the notice of determination which stated: "If you want to dispute this determination in court, you must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter." Specifically, petitioner contended as follows regarding timeliness:

1. The Notice of Determination Concerning Collection Action received by the Petitioner was dated May 16, 2016. Per the letter, a petitioner would have 30 calendar days from the following day (May 17, 2016), of the date the letter was transcribed, to file a timely petition.
2. May 17th to May 18th would then be considered day number one, May 18th to May 19th is day two, May 19th to May 20th is day three, etc. with June 16, 2016 being day number thirty.

However, petitioner's novel construction of the operative language effectively results in May 17th being considered day zero and May 18th being day one. Such is contrary to the manner in which deadlines are set forth in the Internal Revenue Code, as fully explained in Rule 25(a) of the Tax Court Rules of Practice and Procedure, which provides:

- (a) Computation: (1) General: In computing any period of time prescribed or allowed by these Rules or by direction of the Court or by any applicable statute which does not provide otherwise, the day of the act, event, or default from which a designated period of time begins to run shall not be included, and (except as provided in subparagraph (2) [dealing with Saturdays, Sundays, and holidays]) the last day of the period so computed shall be included. If service is made by mail, then a period of time computed with respect to the service shall begin on the day after the date of mailing.

Applying such rules to the case at hand would then proceed as follows. The notice of determination was mailed on May 16, 2016, so this date is not counted as part of the 30-day period. Day one is therefore May 17, 2016, day two is May 18, 2016, as so forth. Proceeding in this manner shows that day 30, the deadline, is June 15, 2016. Thus, a petition would need to be filed, or, alternatively, sent under the section 7502, I.R.C., timely mailing standards, on or before June 15, 2016, in order to be considered timely and to afford the Court jurisdiction to hear the case. This is consistent with respondent's calculations.

Petitioner's attempts to suggest a different interpretation are likewise 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 June 15, 2016, 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 is granted, and this case is dismissed for lack of jurisdiction.

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

ENTERED: **DEC 07 2016**