

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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

ORDER

This case is before the Court on petitioner's Motion To Vacate or Revise Pursuant to Rule 162, filed September 7, 2016, and respondent's Notice of Objection to that motion, filed October 31, 2016.

Background

On November 23, 2015, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground that the petition was not timely filed within the statutory period prescribed by Internal Revenue Code section 6015(e). Respondent attached to his motion a copy of a postmarked certified mail list as evidence of the fact that three notices of determination concerning petitioner's requests for relief from joint and several liability for tax years 2002, 2003, 2004, and 2008 were sent to petitioner by certified mail on June 17, 2015. The petition commencing this case had been filed with this Court on September 25, 2015. The petition had been received by the Court in an envelope bearing a U.S. Postal Service postmark dated September 22, 2015. The parties did not dispute these facts. On March 3, 2016, respondent filed a First Supplement to the motion to dismiss.

In a case seeking review of a determination under I.R.C. section 6015, the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. Pollock v. Commissioner, 132 T.C. 21 (2009); Gormeley v. Commissioner, T.C. Memo. 2009-252. In this regard, I.R.C. section 6015(e) specifically provides that, in order for the Court to have jurisdiction to review a

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determination regarding a request for relief from joint and several liability (innocent spouse relief), the petition must be filed after the earlier of (1) the date which is six months after the date the taxpayer makes a request for innocent spouse relief, or (2) the date a final determination is mailed to the taxpayer, provided such petition is filed within 90 days after that date of mailing. If the conditions of I.R.C. section 7502 are satisfied, however, a petition which is timely mailed may be treated as having been timely filed.

In this case, the last date petitioner could timely file or mail a petition with respect to the notices of final determination, dated and mailed to her on June 17, 2015, was September 15, 2015. The notice of final determination mailed to petitioner advised petitioner that “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.” On December 28, 2015, petitioner filed a Notice of Objection to respondent’s motion to dismiss. In that objection, petitioner asserted that she had spoken to an IRS employee, who erroneously told petitioner that the last date to timely file a petition was September 22, rather than September 15. At that juncture, upon review of the existing record and the submissions by the parties, the Court by an Order of Dismissal for Lack of Jurisdiction entered August 9, 2016, granted respondent’s motion, explaining the governing law at some length, and dismissed this case.

Petitioner’s Motion To Vacate

The disposition of a motion under Rule 162 of the Tax Court Rules of Practice and Procedure to vacate or revise a decision rests within the Court’s discretion, and such motions generally will not be granted absent a showing of unusual circumstances or substantial error, e.g., mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, or other reason justifying relief. See, e.g., Rule 1(b), Tax Court Rules of Practice and Procedure; Fed. R. Civ. P. 60(b); Brannon’s of Shawnee, Inc. v. Commissioner, 69 T.C. 999 (1978); Brewer v. Commissioner, T.C. Memo. 2005-10; Kun v. Commissioner, T.C. Memo. 2004-273; Lowry v. Commissioner, T.C. Memo. 2004-10; Estate of Miller v. Commissioner, T.C. Memo. 1994-25. In addition, motions to vacate generally are not an appropriate vehicle for advancing new legal theories to reach the end result desired by the movant. See Estate of Quick v. Commissioner, 110 T.C. 440, 441-442 (1998). Here, petitioner raises a new argument in her motion. However, in the Court’s discretion and in the interest of a fully developed record, we will address petitioner’s argument.

Petitioner contends that the 90-day period in I.R.C. section 6015(e) for filing a petition for review of a notice of final determination regarding innocent spouse relief is not jurisdictional and, therefore, is subject to equitable tolling. This position, however, is contrary to this Court's settled precedent as set forth in Pollock v. Commissioner, *supra*. In support of her position, petitioner cites a number of Supreme Court cases that have been decided regarding jurisdictional issues since this Court's opinion in Pollock was issued. However, for the reasons articulated in Pollock, the statutes and rules considered in those cases are distinguishable from the jurisdictional provision of I.R.C. 6015(e). Furthermore, in a similar case brought under section 6015, the Court of Appeals for the Third Circuit recently held that "Congress's explicit statement that § 6015(e)(1)(A)'s time limit is jurisdictional means that it is and that the Tax Court lacks authority to consider untimely petitions." Rubel v. Commissioner, No. 16-3526, 2017 WL 1843734, at *3 (3rd Cir. May 9, 2017). Accordingly, this Court will continue to apply its existing jurisprudence, and, consistent with that jurisprudence, concludes that it properly dismissed petitioner's petition because the petition was untimely. Because petitioner has not shown any unusual circumstances or substantial error that warrants granting petitioner's motion, the Court will deny petitioner's motion.

Upon due consideration, it is

ORDERED that petitioner's Motion To Vacate or Revise Pursuant to Rule 162 is denied.

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

Dated: Washington, D.C.
May 25, 2017