

UNITED STATES TAX COURT
WASHINGTON, DC 20217

STEVEN ANTHONY SAPORITO,)	
)	
Petitioner,)	
)	
v.)	Docket No. 8471-17L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER OF DISMISSAL FOR LACK OF JURIDICITION

On May 4, 2017, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground the petition was not timely filed. On May 25, 2017, petitioner filed an Objection to respondent's motion to dismiss.

The Tax Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. 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 I.R.C. section 6320 or 6330, the Court's jurisdiction to review certain collection activity of the Internal Revenue Service depends on (1) the issuance of a valid notice of determination by the Internal Revenue Service Appeals Office under I.R.C. section 6320 or 6330, and (2) the timely filing by the taxpayer of a petition within 30 days of that Appeals Office determination. I.R.C. sec. 6320(c) and 6330(d)(1); Smith v. Commissioner, 124 T.C. 36, 38-39 (2005); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); Rule 330(b), Tax Court Rules of Practice and Procedure.

The record reflects that a notice of determination concerning collection action with respect to petitioner's unpaid income tax liability for 2015 was sent by respondent by certified mail to petitioner at his last known address at 41 Concord Lane, Staten Island, NY 10304 (the 41 Concord Lane address), on March 15, 2017. The 30-day statutory filing period under I.R.C. section 6330(d)(1) expired on April 14, 2017. The petition, filed April 18, 2017, arrived at the Court in a UPS shipping envelope bearing a UPS Next Day Air label with the tracking

SERVED May 31 2017

#1ZOFW8540193861621. Tracking information which respondent obtained from the UPS website (attached as Exhibit B to respondent's motion to dismiss) shows that item (tracking #1ZOFW8540193861621) was shipped/billed in New York on April 16, 2017, for delivery via UPS Next Day Air to the Tax Court in Washington, D.C. That April 16, 2017, shipped/billing date is two days beyond the statutory 30-day filing period.

In pertinent part, Notice 2016-30, 2016-18 I.R.B. 676,¹ provides that:

SPECIAL RULES FOR DETERMINING POSTMARK DATE IN THE CASE OF A PDS

Section 7502(f)(2)(c) requires a PDS to either (1) record electronically to its data base (kept in the regular course of its business) the date on which an item was given to the PDS for delivery or (2) mark on the cover of the item the date on which an item was given to the PDS for delivery. Under section 7502(f)(1), the date recorded or the date marked by the PDS under section 7502(f)(2)(C) is treated as the postmark date for purposes of section 7502.

For each PDS designated in this notice, the delivery service records electronically the date on which an item was given to it for delivery, which is treated as the postmark date for purposes of section 7502. Under this notice, the postmark date for an item delivered after the due date is presumed to be the day that precedes the delivery date by an amount of time that equals the amount of time it would normally take for an item to be delivered under the terms of the specific type of delivery service used (e.g., two days before that actual delivery date for a two-day delivery service). Taxpayers who wish to overcome this presumption must provide information that shows the date recorded in the delivery service's electronic database is on or before the due date, such as a written confirmation produced and issued by the delivery service.

¹Notice 2016-30 is effective April 11, 2016. In Notice 2016-30 the Commissioner includes among designated private delivery services UPS Next Day Air.

In his Objection petitioner asserts that his Tax Court petition was timely mailed/timely filed under I.R.C. section 7502. In his Objection petitioner argues, inter alia:

3. The facts as set forth by respondent are correct; however, the applicable law cited by respondent is not.

4. Pursuant to the IRC's own notice and IRC Section 7503 my petition was timely.

5. Attached hereto as EXHIBIT "A" is a copy of the Notice of Determination Concerning Collection Action(s) dated March 15, 2017. Of note is the fact that the notice clearly states:

"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 (emphasis supplied).

6. Thus the plain meaning of the notice states that the 30 day period begins to run on March 16, 2017.

7. 30 days from March 16, 2017 is April 15th 2017, which was a Saturday and thus excluded. Monday April 17, 2017 was a legal holiday [i.e., Emancipation Day] in the District of Columbia and thus the next business day would have been Tuesday April 18, 2017, which is when my petition was timely filed with the court.

Contrary, to petitioner's above argument, however, the 30-day statutory period for filing a timely Tax Court petition as to the March 15, 2017, notice of determination for 2015 upon which this case is based, expired on Friday, April 14, 2016. That April 14, 2016, date was not a Saturday, Sunday, or legal holiday in the District of Columbia.² Accordingly, the timely mailing/timely filing provision of section 7502 is inapplicable as to petitioner's Tax Court petition in this case, and we must grant respondent's motion and dismiss this case for lack of jurisdiction on the ground the petition was not timely filed.

²See I.R.C. sec. 7503; sec. 301.7503-1(b), Proced. & Admin. Regs.

Upon due consideration, it is

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction filed May 4, 2017, is granted and this case is dismissed for lack of jurisdiction.

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

ENTERED: **MAY 31 2017**