

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JOSEPH GEBREYESUS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 1883-19.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is calendared for trial at the Court’s February 3, 2020, San Francisco, California, trial session. For the reasons set forth below, the Court directs respondent to provide information relevant to deciding whether the Court has jurisdiction in this case.

Background

The petition underlying this case is based on a notice of deficiency dated October 22, 2018. The notice states that petitioner had until January 22, 2019, to petition for review in this Court. The record does not reflect the date on which the notice of deficiency was mailed to petitioner.

The petition was received by the Court in a FedEx envelope bearing a FedEx Priority Overnight label with a “ship date” of “23JAN19” and a tracking number 785088033605. Due to the closure of the federal government between December 22, 2018, and January 25, 2019, the envelope was received by the Court on January 28, 2019, and the petition was filed on the same date.

SERVED Jan 10 2020

Discussion

Limited jurisdiction

The Tax Court is a court of limited jurisdiction, and we may exercise that jurisdiction only to the extent expressly authorized by Congress. Sec. 7442.¹

Jurisdiction in a deficiency case

Our jurisdiction to redetermine a deficiency depends on the issuance of a valid notice of deficiency and the timely filing of a petition. Rule 13(a), (c).

Generally, a petition must be filed within 90 days of the date when the Internal Revenue Service mails the notice of deficiency (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day) or 150 days if the notice is addressed to someone outside the United States. Sec. 6213(a). In addition, when the notice of deficiency issued to a taxpayer specifies a last date for filing a petition with this Court, a petition filed by that date is treated as timely filed. Sec. 6213(a) (last sentence).

If a petition is received by the Court after the relevant deadlines set out in section 6213(a), the petition may nevertheless be timely if it was properly addressed and given to a “designated delivery service” within the appropriate deadline. Sec. 7502(a), (f). A “designated delivery service” means “any delivery service provided by a trade or business if such service is designated by the Secretary for purposes of this section.” Sec. 7502(f)(2). The FedEx Priority Overnight service is a designated delivery service for purposes of section 7502. See IRS Notice 2016-30, 2016-18 I.R.B. 676. Under these rules, the date on which the petition was given to the designated delivery service must be either (a) recorded electronically in the delivery service’s database (i.e., kept in its regular course of business) or (b) marked on the cover of the item to be delivered. Sec. 7502(f)(2)(C).²

¹Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

² Notice 2016-30 provides as follows: “For each [private delivery service] 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

The filing deadlines provided by section 6213(a) are jurisdictional and cannot be extended. Joannou v. Commissioner, 33 T.C. 868, 869 (1960). Failure to file within the prescribed period requires that the case be dismissed for lack of jurisdiction. Id.

Application

As stated above, the statutory notice of deficiency that the Internal Revenue Service issued to petitioner is dated October 22, 2018, and specifies January 22, 2019, as the last date for filing a petition in this Court.

Petitioner used FedEx Priority Overnight to send his petition to the Court, and the envelope in which the petition was delivered bears a ship date of “23JAN2019.” The record does not reflect when the notice of deficiency was mailed to petitioner. If the notice of deficiency was mailed on October 22, 2018 (that is, on the date shown on the notice of deficiency), then the 90-day period under section 6213(a) would have expired on January 22, 2019 (taking into account that January 20, 2019, was a Sunday and January 21, 2019, was a holiday in the District of Columbia). Because the ship date reflected on the FedEx envelope – January 23, 2019 – is one day after January 22, 2019, the petition would be untimely under section 6213(a) and the rules of section 7502(a) and (f).³

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 the actual delivery date for a two-day delivery service). Taxpayers who wish to overcome this presumption must provide information that shows that 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.” The envelope in which the petition was delivered to the Court was received on January 28, 2019, because of the closure of the federal government between December 22, 2018, and January 25, 2019. In light of the foregoing, for purposes of our analysis, we rely on the ship date reflected in the label of the envelope, rather than the presumption provided in Notice 2016-30.

³ The last sentence of section 6213(a) would not change this outcome. As noted above, the notice of deficiency issued by the Internal Revenue Service states that petitioner had until January 22, 2019, to petition for review in this Court. But, based on the ship date, the petition was not provided to the designated delivery

If, however, the notice was mailed after October 22, 2018, the 90-day period would have expired no earlier than January 23, 2019, and, since the petition was given to FedEx by January 23, 2019, under section 7502(a) and (f) the petition would be treated as having been timely filed.

Conclusion

For the reasons set forth above and upon due consideration, it is hereby

ORDERED that respondent is directed to file with the Court, no later than January 21, 2020, a written statement detailing the proof (including any documentation) to show when the notice of deficiency was mailed to petitioner.

**(Signed) Emin Toro
Judge**

Dated: Washington, D.C.
January 10, 2020

service until January 23, 2019, a day after the last date specified in the notice of deficiency, making the last sentence of section 6213(a) inapplicable.