

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

ROARY WILLIAM MCCLAIN,)	
)	
Petitioner,)	
)	
v.)	Docket No. 2699-19S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This case is calendared for trial at the April 6, 2020, Seattle, Washington, Trial Session of the Court. The petition in this case was filed with the Court on February 4, 2019. Petitioner seeks review of a notice of deficiency dated October 9, 2018, for tax year 2015. On April 5, 2019, respondent filed an Answer in this case, and attached a copy of the notice of deficiency.

On February 11, 2020, the Court issued an Order to Show Cause (OSC) directing respondent to file a response with the postmarked U.S. Postal Service Form 3877 or other proof of mailing, showing the October 9, 2018, deficiency notice for 2015, upon which this case is based, was sent by certified or registered mail to petitioner at his last known address on or about October 9, 2018. The OSC also directed that both parties, on or before March 3, 2020, shall show cause, in writing, why the Court should not dismiss the case for lack of jurisdiction on the ground the petition was not timely filed.

Respondent filed a response on February 20, 2020, and attached the postmarked U.S. Postal Service Form 3877 showing the notice of deficiency was mailed to petitioner at petitioner’s last known address, by certified mail on October 9, 2018. Respondent stated in his response that he has no objection to dismissing this case for lack of jurisdiction on the ground the petition was not timely filed. Petitioner did not respond.

The record reflects that respondent mailed a notice of deficiency for tax year 2015, on October 9, 2018. The 90-day period for filing a timely petition with the

Court expired on January 7, 2019. The petition, filed February 4, 2019, arrived at the Court in an envelope bearing a United States Postal Service postage meter mark dated “02/01/19”. The petition also included two other envelopes--one properly addressed to the U.S. Tax Court and mailed by FedEx Standard Overnight with a ship date of “08JAN19” and a second envelope addressed to petitioner and mailed by FedEx Express Saver with a ship date of “15JAN19”.

The Court is a court of limited jurisdiction and may exercise jurisdiction only to the extent provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In a case seeking redetermination of a deficiency, the Court’s jurisdiction depends, in part, on (1) the issuance by the IRS of a valid notice of deficiency to the taxpayer and (2) the timely filing of a petition by the taxpayer. See secs. 6121, 6213(a);¹ Frieling v. Commissioner, 81 T.C. 42, 46 (1983); Brown v. Commissioner, 78 T.C. 215, 220 (1982); Rule 13(c).

Respondent presented the postmarked U.S. Postal Service Form 3877 showing the notice of deficiency was mailed to petitioner’s last known address by certified mail on October 9, 2018. Petitioner has not presented any evidence or argued the notice of deficiency, dated October 9, 2018, was not valid. Therefore, the Court finds that respondent issued a valid notice of deficiency to petitioner.

Section 6213(a) provides that the petition must be filed with the Court within 90 days after the notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day). The Court has no authority to extend this 90-day period. Joannou v. Commissioner, 33 T.C. 868, 869 (1960). Under certain instances, a timely mailed petition may be treated as though it were timely filed. Sec. 7502(a); sec. 301.7502-1, Proced. & Admin. Regs. In this case, petitioner attached to his petition an envelope with a ship date of “08JAN19”, which was one day after the expiration of the 90-day period.

However, due to a lapse in Federal appropriations, the Court was closed from midnight December 28, 2018, until it reopened on January 28, 2019. In Guralnik v. Commissioner, 146 T.C. 230, 252-253 (2016), this Court concluded and held as follows:

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, in effect for the tax year in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

[Federal Rules of Civil Procedure] Rule 6(a)(3) is ‘suitably adaptable’ to specify the principle for computing time when our Clerk’s Office is inaccessible because of inclement weather, government closing, or other reasons. Civil Rule 6(a)(3) provides that the time for filing is then ‘extended to the first accessible day that is not a Saturday, Sunday, or legal holiday.’ Because the petition [in Guralnik] was filed on * * * the first accessible day after the Court reopened for business, the petition was timely filed and we have jurisdiction to hear this case.

The petition in this case was filed on February 4, 2019. The envelope that contained the petition was a United States Postal Service envelope with a postage meter mark dated “02/01/19”. Because the Court reopened on January 28, 2019, the petition was not timely filed. Therefore, the Court does not have jurisdiction to hear this case.

Upon due consideration, it is

ORDERED that the Court’s Order To Show Cause, dated February 11, 2020, is hereby made absolute. It is further

ORDERED that, on the Court’s own motion, this case is dismissed for lack of jurisdiction on the ground that the petition was not timely filed as to tax year 2015.

(Signed) Diana L. Leyden
Special Trial Judge

ENTERED: **MAR 17 2020**