

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CRAIG GRIFFITHS & ANNA GRIFFITHS,)	
)	
Petitioners,)	
)	
v.)	Docket No. 21080-18.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	
)	
)	
)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On December 14, 2018, respondent filed in the above-docketed case a Motion To Dismiss for Lack of Jurisdiction, on the ground that the petition was not filed within the time prescribed by section 6213(a) or 7502 of the Internal Revenue Code (I.R.C.). Respondent attached to the motion a copy of a certified mail list, as evidence of the fact that a notice of deficiency for the 2015 and 2016 tax years, dated July 24, 2018, had been sent to petitioners by certified mail on July 24, 2018.

The petition was filed with the Court on October 25, 2018, which date is 93 days after the date of the notice of deficiency for tax year 2015 mailed to petitioners. The petition was received by the Court via FedEx Express Saver in an envelope that bears a FedEx-generated sticker label reflecting a ship date of October 23, 2018, which date is 91 days after the date of the notice. FedEx electronic database tracking information is consistent in showing October 23, 2018, as the ship date and FedEx Express Saver as the service.

This Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In a case seeking the redetermination of a deficiency, the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Brown v. Commissioner, 78 T.C. 215, 220 (1982). In this regard, section 6213(a), I.R.C., provides that the petition must be filed with the Court within 90 days, or 150 days if the notice is addressed to a person outside the United States, 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 (or 150-day) period. Joannou v. Commissioner, 33 T.C. 868, 869 (1960). However, a petition shall be treated as timely filed if it is filed on or before the last date specified in such notice for the filing of a Tax Court petition, a provision which becomes relevant where that date is later than the date computed with reference to the mailing date. Sec. 6213(a), I.R.C. Likewise, 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 October 22, 2018. However, the petition was not filed within that period.

Petitioners were served with a copy of respondent's motion to dismiss and, on January 7, 2019, filed an opposition. Therein, petitioners took the following position with respect to the timeliness of the petition: "Here, Petitioner husband, Craig Griffiths timely mailed petitioners' tax court petition on October 22, 2018, via FedEx Express, a designated private delivery service. * * * Since petitioners utilized a designated private delivery service to mail their petition on October 22, 2018, their petition should be treated as timely filed as of the date of October 22, 2018, the date of mailing."

Although the Court is sympathetic to petitioners' situation, section 7502, I.R.C., governs the procedures under which a petition that is mailed on or before the expiration of the statutory filing period is treated as having been timely filed. The statute applies to documents sent by U.S. mail and to documents sent by private delivery services that have been explicitly designated by the Government for that purpose. Sec. 7502(a), (f), I.R.C. Critically, however, and as relevant here, while certain forms of FedEx delivery have been so designated, FedEx Express Saver is not one of the private delivery services recognized under section 7502, I.R.C. See Notice 2016-30, 2016-18 I.R.B. 676.

Unfortunately, relevant law places the burden and risk on the taxpayer to establish timely mailing for purposes of section 7502, I.R.C., not on the Commissioner to show untimeliness. See sec. 301.7502-1(c)(1)(iii)(A), Proced. & Admin. Regs. In that connection, and to augment the express requirements given in the statute, regulations set forth a framework for evaluating particular mailing scenarios, as follows. First, assuming that a postage prepaid hurdle has been crossed, regulations provide that if an envelope bears a legible U.S. Postal Service postmark, that mark is considered conclusive absent proof of registered or certified mailing, or shipment by a designated private delivery service (PDS), on a contrary date, "regardless of when the document or payment is deposited in the mail". Sec. 301.7502-1(c)(1)(iii), (2), (3), Proced. & Admin. Regs.

The exception for registered or certified mail, or shipment by a designated PDS, is likewise further elucidated by regulations. As to certified or registered mail, the regulations specify that the date of registration of a document or the date "postmarked by the postal employee to whom the document * * * is presented" on the sender's certified mail receipt "is treated as the postmark date of the document" and will thus eliminate the risk of an untimely postmark on an envelope. Sec. 301.7502-1(c)(2), Proced. & Admin. Regs.; see also sec. 301.7502-1(e)(2)(i), Proced. & Admin. Regs. As to a designated PDS, the regulations and

additional administrative guidance treat the date of delivery to the PDS, as recorded in the PDS's electronic database, as the equivalent to proof of registered or certified mailing. Sec. 301.7502-1(c)(3), (e)(2)(ii), *Proced. & Admin. Regs.*; Notice 2016-30, 2016-18 I.R.B. 676.

Alternatively, in absence of a legible U.S. Postal Service postmark or showing of delivery by a designated PDS, section 301.7502-1(c)(1)(iii)(B)(1), (2), *Proced. & Admin. Regs.*, provides that if a document in a mailing envelope bearing a timely, legible postmark made other than by the U.S. Postal Service is received after the time when a document so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, the document is treated as having been received at the time when a document so mailed and so postmarked would ordinarily be received if the person required to file the document establishes: (1) That the delay in receiving the document was due to a delay in transmission of the U.S. Mail; and (2) the cause of the delay. In the case of both a U.S. Postal Service postmark and a non-U.S. Postal Service mark, the U.S. Postal Service postmark controls, and the other is disregarded. Sec. 301.7502-1(c)(1)(iii)(B)(3), *Proced. & Admin. Regs.*

Where there is no legible postmark of any kind, no sending by registered or certified mail, and no delivery by a designated PDS, section 7502, I.R.C., affords no explicit protection.

Here, the FedEx label on the envelope lists October 23, 2018, as the ship date. The tracking information in the FedEx electronic database likewise reflects October 23, 2018, as the formal ship date. However, both the label and the database confirm that the service type was FedEx Express Saver, which again is not a designated PDS. Regardless of the dates involved, only those types of FedEx service listed as designated can assist taxpayers in these circumstances. Thus the petition was both sent one day late under the regulatory provisions related to FedEx and sent by a service not recognized for section 7502, I.R.C., purposes. Moreover, even if the petition had been sent one day earlier but still using FedEx Express Saver, that, too, would have been insufficient to qualify as timely.

Hence, while the Court is sympathetic to petitioners' situation and understands the unintentional and frustrating character of difficulties regarding mailing, and the good faith of petitioners' efforts, the fundamental nature of the filing deadline precludes the case from going forward. As a Court of limited jurisdiction, the Court is unable to offer any remedy or assistance when a petition is filed late. Rather, the Court is barred from considering in any way petitioners' case or the correctness of their claims. Regrettably, governing law recognizes no reasonable cause or other applicable exception to the statutory deadline.

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). Accordingly, since petitioners have failed to establish in accordance with the governing statutes and regulations that a petition or other correspondence was mailed to or filed with this Court within the required period, this case must be dismissed for lack of jurisdiction. The Court would, however, encourage petitioners to consider and/or continue working administratively through the Internal Revenue Service (IRS), which, being entirely separate from the Tax Court, may be able

to offer alternative avenues for relief, not dependent on the existence of a Tax Court case, such as audit reconsideration or a refund action.

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) Maurice B. Foley
Chief Judge

ENTERED: **FEB 04 2019**