

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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MICHAEL ANTHONY THOMPSON &)
SHARON MCLEAN THOMPSON,)
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Petitioners,)
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v.) Docket No. 20138-18S.
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COMMISSIONER OF INTERNAL REVENUE,)
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Respondent)
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ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On November 30, 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 dated July 13, 2018, for the taxable year 2015 had been sent to petitioners by certified mail on July 13, 2018.

The petition was filed with the Court on October 15, 2018, which date is 94 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 11, 2018, which date is 90 days after the date of the notice. FedEx electronic database tracking information, a copy of which was attached to the motion to dismiss, is consistent in showing that the item was picked up by FedEx on October 11, 2018, and that FedEx Express Saver was 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

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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 11, 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 29, 2019, filed an objection. Therein, petitioners explained as follows regarding the timeliness of the petition:

We object to this Motion to Dismiss for Lack of Jurisdiction because we mailed our petition by FedEx Express Commercial Shipping (Tracking No. 783208382813) to the Tax Court for a redetermination of the Notice of Deficiency on October 11, 2018, within the 90-day statutory deadline.

According to the instructions how to file your petition on the second page of our Notice of Deficiency its states "that a petition is generally considered timely filed if the postmark date by the United States Postal Service or the date marked by a designated private delivery service in lieu of a postmark is within the 90-day period and the envelope containing the petition is properly addressed with the correct postage." We have included the IRS instructions and a copy of the FedEx shipping receipt dated October 11, 2018, which meets the above description by law of one way a petition is considered timely filed with the Tax Court.

The attached receipt is dated October 11, 2018, and reflects purchase of FedEx Express Saver Commercial shipment services for the corresponding tracking number at "Bulldog Express" in Garner, North Carolina.

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 11, 2018, as the ship date. The tracking information in the FedEx electronic database likewise reflects October 11, 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.

Hence, while the Court sympathizes with petitioners’ predicament and understands the unintentional and frustrating character of difficulties regarding mailing, as well 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 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 that are not dependent upon 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 25 2019**