

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

JASON CHICAS,)
)
 Petitioner,)
)
 v.) Docket No. 4166-19.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On April 16, 2019, respondent filed a Motion To Dismiss for Lack of Jurisdiction on the ground the petition was not filed timely as to the October 1, 2018, deficiency notice issued to petitioner for taxable year 2016. On May 7, 2019, petitioner filed his Response to respondent’s motion to dismiss. On May 7, 2019, petitioner filed his First Supplement to his response.

The record reflects that a notice of deficiency was mailed to petitioner for 2016 on September 27, 2018. The last day under I.R.C. section 6213(a) for filing a timely Tax Court petition as to that deficiency notice expired on December 31, 2018. The petition, filed February 25, 2019, arrived at the Court in a UPS shipping envelope with a UPS Ground label dated “22 FEB 2019”--53 days after the statutory 90-day period expired.

In his Response, as supplemented, petitioner asserts/indicates that: (1) on January 3, 2019, during the partial government shutdown, petitioner shipped via UPS Ground to the Tax Court in Washington, D.C., his petition for redetermination of his proposed 2016 tax liability; (2) UPS could not deliver that petition due to the Tax Court being closed for normal operations, and it was returned to petitioner by UPS sometime on or after January 4, 2019;¹ and (3) on February 22, 2019, petitioner reshipped that petition via UPS Ground to the Tax

¹The Tax Court resumed its operations on January 28, 2019, after the government shutdown ended.

Court in Washington D.C.² Petitioner maintains the Court should take into consideration that the Tax Court was closed for normal operations from December 30, 2018, through January 25, 2019.

I.R.C. section 7502(f) governs the treatment of private delivery services under section 7502. It provides that the sending of a petition by a designated private delivery service may be treated as timely mailed. In Notice 2016-30,³ 2016-18 I.R.B. 676, the Commissioner includes among designated private delivery services UPS Next Day Air Early A.M., UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express. In pertinent part, Notice 2016-30 further provides that "UPS * * * [is] not designated with respect to any type of delivery service not enumerated in this list." See sec. 301.7502-1(c)(3), Proced. & Admin. Regs. UPS Ground, which petitioner used to mail the petition in the instant case to the Court, thus is not a designated private delivery service under Notice 2016-30. Accordingly, the timely mailing/timely filing provision of section 7502 is inapplicable in this case. See Guralnik v. Commissioner, 146 T.C. 230, 241-242 (2016); Scraggs v. Commissioner, T.C. Memo. 2012-256, at *5 (holding timely mailing/timely filing rule does not apply to FedEx Express Saver Third Business Day service); Raczkowski v. Commissioner, T.C. Memo. 2007-72 (holding the same with respect to UPS Ground service).

As indicated above, the record reflects the petition in this case was not filed timely as to the October 1, 2018, deficiency notice issued to petitioner for 2016 upon which this case is based. The Court has no authority to extend the statutory period for filing a timely petition. Axe v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, we are obliged to dismiss this case for lack of jurisdiction. I.R.C. secs. 6213(a), 7502; Brown v. Commissioner, 78 T.C. 215, 220 (1982); Rule 13(c), Tax Court Rules of Practice and Procedure.

Petitioner cannot prosecute this case in this Court. However, petitioner may continue to pursue administrative resolution of his 2016 tax liability directly with the Internal Revenue Service. If financially feasible for him, petitioner may further pay the tax, file a claim for refund with the Internal Revenue Service, and if the claim is denied, sue for a refund in the Federal district court or the U.S. Court

²Attached to the petition are both (1) the January 3, 2019, UPS Ground shipping envelope, and (2) the February 22, 2019, UPS Ground shipping envelope.

³Notice 2016-30 is effective April 11, 2016.

of Federal Claims. See also, McCormick v. Commissioner, 55 T.C. 138, 142 (1970).

Upon due consideration, it is

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction, filed April 16, 2019, is granted and this case is dismissed for lack of jurisdiction.

(Signed) Maurice B. Foley
Chief Judge

ENTERED: **MAY 10 2019**