



United States Tax Court

Washington, DC 20217

CHRIS LYNCH,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 1398-24

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On March 20, 2024, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the grounds that the Petition was not filed within the time prescribed in the Internal Revenue Code. On April 16, 2024, petitioner filed an Objection to respondent's Motion. For the reasons that follow, we must grant respondent's Motion and dismiss this case for lack of jurisdiction.

Like all federal courts, the Tax Court is a court of limited jurisdiction. Jurisdiction must be proven affirmatively, and a taxpayer invoking our jurisdiction bears the burden of proving that we have jurisdiction over the taxpayer's case. *See Fehrs v. Commissioner*, 65 T.C. 346, 348 (1975); *Wheeler's Peachtree Pharmacy, Inc. v. Commissioner*, 35 T.C. 177, 180 (1960). In a deficiency case, this Court's jurisdiction depends on the issuance of a valid notice of deficiency and the timely filing of a petition 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). *Organic Cannabis Found., LLC v. Commissioner*, 962 F.3d 1082 (9th Cir. 2020); *Hallmark Rsch. Collective v. Commissioner*, 159 T.C. 126, 130 n.4 (2022); *Monge v. Commissioner*, 93 T.C. 22, 27 (1989); *Normac, Inc. v. Commissioner*, 90 T.C. 142, 147 (1988); *see Sanders v. Commissioner*, No. 15143-22, 161 T.C., slip op. at 7–8 (Nov. 2, 2023) (holding that the Court will continue treating the deficiency deadline as jurisdictional in cases appealable to jurisdictions outside the U.S. Court of Appeals for the Third Circuit).

On October 23, 2023, a notice of deficiency for tax year 2021 was mailed to petitioner's last known address. The 90th day after the date of mailing was Sunday, January 21, 2024; however, Internal Revenue Code (I.R.C.) section 6213(a) provides that Saturdays, Sundays, and legal holidays in the District of Columbia are not counted as the last day of the 90-day period. The last date to file a timely petition as to the notice of deficiency in this case was therefore January 22, 2024, as printed on the notice.

The Petition in this case was received and filed by the Court on January 24,

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2024. The envelope in which the Petition was delivered bears a FedEx "Express Saver" sticker with a ship date of January 22, 2024.

Under certain circumstances, a timely mailed petition may be treated as though it were timely filed. *See* I.R.C. § 7502. I.R.C. section 7502(f) extends the "timely mailed, timely filed" rule of I.R.C. section 7502 to certain private delivery services. However, this extension applies only if the delivery service in question has been "designated" by the Secretary of the Treasury. I.R.C. § 7502(f)(2). In Notice 2016-30, 2016-18 I.R.B. 676, the Internal Revenue Service lists all the private delivery services that have been so designated. FedEx Express Saver does not appear on this list; accordingly, the "timely mailed, timely filed" rule does not apply to filings shipped with this delivery service. *See Eichelburg v. Commissioner*, T.C. Memo. 2013-269. As the Petition in this case was not filed within the period prescribed by the Internal Revenue Code, this case must be dismissed for lack of jurisdiction.

In his Objection to respondent's Motion, petitioner argues that because the Petition was shipped on January 22, 2024, it was timely. However, as explained above, the "timely mailed, timely filed" rule does not apply to filings shipped using FedEx Express Saver.

The record in this case establishes that the Petition was not timely filed and, accordingly, the Court is obliged to dismiss this case for lack of jurisdiction. We have no authority to extend the period for timely filing. *See Hallmark Rsch. Collective*, 159 T.C. at 167; *Axe v. Commissioner*, 58 T.C. 256, 259 (1972); *Joannou v. Commissioner*, 33 T.C. 868, 869 (1960). Although petitioner cannot prosecute this case in this Court, petitioner may still pursue an administrative resolution of petitioner's 2021 tax liability directly with the IRS.

Upon due consideration of the foregoing, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction is granted, and this case is dismissed for lack of jurisdiction because the Petition was not filed within the period prescribed by I.R.C. section 6213(a).

(Signed) Kathleen Kerrigan
Chief Judge