

UNITED STATES TAX COURT
WASHINGTON, DC 20217

BOECHLER, P.C.,)
)
Petitioner,)
)
v.) Docket No. 18578-17 L
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER OF DISMISSAL

This section 6330(d)¹ case is before the Court on respondent’s Motion to Dismiss for Lack of Jurisdiction, filed October 4, 2017. Respondent’s motion is based upon the ground that the petition was not filed within the 30-day period prescribed by section 6330(d).

Reciting the relevant procedural history of this case is easily done. In a Notice of Determination Concerning Collection Action(s) Under Sections 6320 and/or 6330, dated July 28, 2017 (notice), respondent determined that a levy is an appropriate collection action with respect to Federal tax liabilities respondent claims to be due from petitioner. A Form 3877 certified mailing list indicates that the notice was sent to petitioner’s last known address by certified mail on July 28, 2017. USPS tracking information shows that the notice was delivered to petitioner on July 31, 2017.

As respondent’s motion points out, to be timely a petition filed in response to the notice would have to have been filed with, or properly mailed to the Court on or before August 27, 2017, but because that date was a Sunday, the last day to file, or properly mail a petition was instead Monday, August 28, 2017. See sec. 7503. That didn’t happen. The U.S. postmark on the envelope containing the

¹ Unless otherwise noted, section references are to the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov.

petition indicates that the petition was mailed on August 29, 2017. The petition was not received and filed by the Court until September 1, 2017.

In cases such as this one, the Court's jurisdiction depends on the issuance of a valid notice of determination by respondent's Office of Appeals and the timely filing of a petition by the taxpayer in response. Sec. 6330(d)(1); Weber v. Commissioner, 122 T.C. 258, 261 (2004); Sarrell v. Commissioner, 117 T.C. 122, 125 (2001); see Rule 330(b). See generally Rules 330-334.

Petitioner's objection to respondent's motion was filed on November 28, 2017. According to petitioner: (1) the 30-day period prescribed in section 6330(d)(1) is not jurisdictional, but if it is, then (2) section 6330(d)(1) is subject to equitable tolling, and (3) the manner that respondent (not to mention this Court) calculates the 30-day period, that is from the date of mailing rather than the date of receipt, violates petitioner's rights under the 5th Amendment because that method is arbitrary.

None of petitioner's objections are persuasive.

We have repeatedly held that "[t]he 30-day period provided in section 6330(d)(1) for the filing of a petition for review is jurisdictional." Gray v. Commissioner, 138 T.C. 295, 299 (2012). Furthermore, in Guralnik v. Commissioner, 146 T.C. 230, 237-238 (2016), we held that because the statutorily-prescribed filing period is jurisdictional, the period is not subject to equitable tolling, see Auburn Reg'l Med. Ctr., 133 S. Ct. at 824 (a court may not apply equitable tolling to a jurisdictional filing requirement); Pollock v. Commissioner, 132 T.C. 21, 29 (2009) ("If a deadline is jurisdictional, a court may not use equitable tolling to extend it * * * even if the result is harsh."). Lastly, we reject petitioner's claim that the manner by which the 30-day period is calculated is arbitrary and violative of petitioner's 5th Amendment rights. Other than point out how the method affects the filing period, petitioner has not explained why the method is arbitrary. Furthermore, the method reflects the standard and consistent way that various periods provided for under the Internal Revenue Code and other Federal statutes are calculated. See, e.g., 2 U.S.C. 394(a); Rule 25; Fed. R. Civ. P. 6. That being so, it is

ORDERED that respondent's motion is granted and this case is dismissed

for lack of jurisdiction upon the ground that the petition was not filed within the period prescribed by section 6330(d).

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED: **FEB 15 2019**