



# United States Tax Court

Washington, DC 20217

JANG K. KIM & UN S. PARK,

Petitioners

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent

Docket No. 3312-22S

## **ORDER AND ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

By Order to Show Cause, served December 8, 2022, the Court directed the parties to show cause why this case should not be dismissed for lack of jurisdiction on the ground that the petition was not timely filed. On December 22, 2022, respondent filed a Response to the order to show cause, asserting that the petition was untimely and attaching thereto a copy of the certified mail list as evidence of the fact that the notice of deficiency was sent to petitioners by certified mail on November 29, 2021, and a copy of the notice of deficiency issued to petitioners, which states that the last date to petition the Tax Court is February 28, 2022.

The petition was electronically filed on March 1, 2022, which date is 92 days after the date the notice of deficiency for tax year 2019 was mailed to petitioners.

This Court is a court of limited jurisdiction. This Court's jurisdiction to determine a deficiency in income tax depends on the issuance of a valid notice of deficiency and a timely filed petition. Rule 13(a) and (c); *Hallmark Research Collective v. Commissioner*, No. 21284-21, 159 T.C. (Nov. 29, 2022); *Monge v. Commissioner*, 93 T.C. 22, 27 (1989); *Normac, Inc. v. Commissioner*, 90 T.C. 142, 147 (1988). In this regard, I.R.C. section 6213(a) provides that the petition must be filed with the Court 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). If a petition is timely mailed, it will be considered timely filed. See I.R.C. sec. 7502(a)(1). In order for the timely mailing/timely filing provision to apply, the envelope containing the petition must be properly addressed to the Tax Court in Washington, D.C., and bear a postmark with a date that is on or before the last date for timely filing a petition. See I.R.C. sec. 7502(a)(2). The Court has no authority to extend this 90 day (or 150 day) period. *Joannou v. Commissioner*, 33 T.C. 868, 869 (1960).

In the present case, the time for filing a petition with this Court expired on February 28, 2022. However, the petition was not filed within that 90 day period.

**Entered and Served 02/22/23**

On December 30, 2022, petitioners filed a Response to Order to Show Cause, in which they argue that the petition was filed at 12:01 a.m. on March 1, 2022, and the Court should consider that the petition was submitted from the State of California at 9:01 p.m. on February 28, 2022. In addition, Petitioners also argue that they last saved the petition at 8:54 p.m. on February 28, 2022, to their computer and the petition was likely submitted by them before the petition was received by the Court.

In pertinent part, the Court's DAWSON Petitioner Training Guide, at page 10, states, "The Court MUST receive your electronically filed Petition no later than 12:59 pm Eastern Time on the last date to file. Petitions received after this time are considered untimely and your case may be dismissed for lack of jurisdiction." A copy of the DAWSON Petitioner Training Guide is posted in the Rules & Guidance section of the Court's website at [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

While the Court is sympathetic to petitioners' situation, governing law recognizes no exceptions for good cause or similar grounds that would allow them to proceed in this judicial forum. *Hallmark Research Collective v. Commissioner*, No. 21284-21, 159 T.C. (Nov. 29, 2022); *Axe v. Commissioner*, 58 T.C. 256 (1972). Accordingly, since the petition was not filed within the required 90 day period, this case must be dismissed for lack of jurisdiction.

The fact that the Court is obliged to dismiss this case for lack of jurisdiction does not preclude the parties from administratively resolving the deficiency issues if they are able to do so. In addition, if financially feasible, petitioners may pay the tax, file a claim for refund with the Internal Revenue Service, and if the claim is denied, sue for a refund in Federal district court or the U.S. Court of Federal Claims. *See McCormick v. Commissioner*, 55 T.C. 138, 142 (1970).

Upon due consideration, it is

ORDERED that the parties Joint Proposed Stipulated Decision, filed May 11, 2022, is hereby deemed stricken from the Court's record in this case. It is further

ORDERED that the Court's Order to Show Cause, dated December 8, 2022, is hereby made absolute. It is further

ORDERED that, on the Court's own motion, this case is dismissed for lack of jurisdiction on the ground that the petition was not timely filed as to tax year 2019.

**(Signed) Kathleen Kerrigan**  
**Chief Judge**