



# United States Tax Court

Washington, DC 20217

JUSTIN BLAINE SHEAD,

Petitioner

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent

Docket No. 390-22S

## **ORDER OF DIMISSALFOR LACK OF JURISDICTION**

Petitioner electronically filed a petition with the Court On January 11, 2022. The Notice of Deficiency (NOD) that is the subject of the petition is dated October 4, 2021, and indicates that the last day to petition the Court is January 3, 2022. Accordingly, on December 20, 2022, the Court served an Order to Show Cause on the parties instructing them to show cause in writing why the Court should not, on its own motion, dismiss this case for lack of jurisdiction on the ground that the petition herein was not filed within the time prescribed by Internal Revenue Code § 6330 or § 7502.<sup>1</sup>

On January 13, 2023, respondent filed a Status Report (index #12) indicating to the Court that respondent's counsel does not have cause as to why the Court should not dismiss the case for lack of jurisdiction. That same day, petitioner filed a Response (index #13) apprising the Court that he was out of the country when respondent mailed the NOD, and therefore had 150 days to petition the Court instead of 90 days.

On January 23, 2023, the Court served an Order on petitioner instructing him to file a response including relevant documents showing proof of travel outside of the United States on October 4, 2021, the date respondent mailed the NOD. Petitioner filed a response on February 6, 2023, including a notarized General Affidavit in which he swore that on October 2, 2021, he left the United States with his family and drove to Mexico to celebrate El Día De Los Muertos. Petitioner further swore that he and his family had remained in Mexico until their return to the United States on November 7, 2021. Petitioner included a photo copy of his valid passport card to

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

**Entered and Served 02/14/23**

support his sworn statement.

This Court is a court of limited jurisdiction. It may 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); *Hallmark Research Collective v. Commissioner*, No. 21284-21, 159 T.C. (Nov. 29, 2022); *Brown v. Commissioner*, 78 T.C. 215, 220 (1982). Section 6213(a), provides that the petition must be filed with the Court within 90 days (150 days if the notice is addressed to a person outside the United States)<sup>2</sup> after the NOD is mailed. The Court lacks authority to extend the time to file a petition after receipt of a NOD. *Hallmark Research Collective v. Commissioner*, No. 21284-21, 159 T.C. (Nov. 29, 2022). However, a timely mailed petition is treated as having been timely filed. Sec. 7502.

Petitioner's sworn statement equates to testimony, which the Court must weigh. *See Higbee v. Commissioner*, 116 T.C. 438, 442 (2001) (the Court determines what evidence is credible). Petitioner did not provide any stamped or dated documents showing entry into or exit from Mexico. His passport card is not stamped as a paper passport would be. Further, petitioner did not provide any other documentation to establish he was in Mexico between October 2, 2021 and November 7, 2021. Given that petitioner has not corroborated his statement that he was out of the country when respondent mailed the NOD in this case, the Court is not inclined to find that petitioner had 150 days, instead of 90 days, to petition the Court.

Upon due consideration of the foregoing, it is hereby

ORDERED that the Court's Order to Show Cause, filed December 20, 2022, is discharged. It is further

ORDERED that this case is dismissed, without prejudice, for lack of jurisdiction upon the ground that the petition in this case was not filed within the time prescribed by I.R.C. § 6330 or § 7502.

**(Signed) Eunkyong Choi**  
**Special Trial Judge**

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<sup>2</sup> The notice need not be addressed to a taxpayer residing outside the United States for the 150-day deadline to apply. The taxpayer need only be temporarily out of the country at the time the IRS mailed the notice, thereby delaying the taxpayer's receipt of the notice. *See Levy v. Commissioner*, 76 T.C. 228 (1981).