

US TAX COURT
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US TAX COURT
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FELIX GURALNIK

Petitioner(s)

ELECTRONICALLY FILED

v.

Docket No. 4358-15 L

COMMISSIONER OF INTERNAL REVENUE,
Respondent

RESPONSE TO ORDER DATED 08/24/2015

SERVED Oct 07 2015

UNITED STATES TAX COURT

FELIX GURALNIK,)
)
 Petitioner,)
)
 v.) Docket No. 4358-15 L
)
 COMMISSIONER OF INTERNAL REVENUE,) Filed Electronically
)
 Respondent.)

RESPONDENT'S RESPONSE TO ORDER DATED AUGUST 24, 2015, SETTING FORTH THE COURT'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO TAX COURT RULE 183(c)

PURSUANT TO Tax Court Rule 183(c), Respondent objects to the Court's Recommended Conclusions of Law set forth in its Order dated August 24, 2015 ("Order").

The Court's Recommended Findings of Fact are not in dispute. However, Respondent objects to the following conclusions of law of the Special Trial Judge:

(1) That the winter storm in the District of Columbia on February 17, 2015, which caused the closure of District and federal offices, including the Tax Court, constitutes a "legal holiday" within the meaning of I.R.C. § 7503¹;

(2) That the "inaccessibility of the clerk" provision of Rule 6(a) of the Federal Rules of Civil Procedure is further support that a snow day should be considered a legal holiday under Section 7503; and

¹ Herein referred to as "Section 7503" in textual sentences.

(3) That the Tax Court has jurisdiction over this case on the grounds that the petition was timely filed.

IN SUPPORT THEREOF, Respondent respectfully states:

I. THE COURT ERRED IN CONCLUDING THAT A SNOWSTORM WHICH CLOSED DISTRICT AND FEDERAL GOVERNMENT OFFICES, INCLUDING THE TAX COURT, CONSTITUTES A "LEGAL HOLIDAY" WITHIN THE MEANING OF SECTION 7503 OF THE INTERNAL REVENUE CODE.

1. In its Order, the Court noted that the Tax Court was closed on February 17, 2015, due to a winter storm that affected the Washington, D.C., metropolitan area. The Special Trial Judge held that this closure served to extend the deadline to file a Tax Court petition because the closure was "a legal holiday in the District of Columbia for purposes of section 7503." Order p. 12. This conclusion is incorrect as a matter of law.

2. The closing of federal offices in Washington, D.C., on Tuesday, February 17, 2015, was not "a legal holiday in the District of Columbia" within the meaning of Section 7503. Accordingly, Petitioner did not file his petition within the time prescribed by I.R.C. § 6330(d)(1). As a result, the Court lacks jurisdiction.

3. Therefore, the Court erred in denying Respondent's motion to dismiss for lack of jurisdiction.

A. There Is No Express Language in Any Statute or Treasury Regulation That Would Support the Court's Conclusion that the Snow Day Was a "Legal Holiday."

4. Even though Winter Storm Octavia caused the closing of federal offices (including the Tax Court) in Washington, D.C., on Tuesday, February 17, 2015, such date was not a "legal holiday in the District of Columbia" within the meaning of Section 7503.

5. Section 7503 governs the "[t]ime for performance of acts where [the] last day falls on [a] Saturday, Sunday, or legal holiday." I.R.C. § 7503.

6. "When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday." Id.

7. Section 7503 applies to the filing of a petition with the Tax Court. See Treas. Reg. § 301.7503-1(a).

8. The date at issue in this case is Tuesday, February 17, 2015. Since this was not a Saturday or Sunday, the relevant inquiry is whether such date was a "legal holiday in the District of Columbia" within the meaning of section 7503.

9. The statute states that "the term 'legal holiday' means a legal holiday in the District of Columbia." I.R.C.

§ 7503. If the "act" required under the internal revenue laws is to be performed outside of the District of Columbia, then "legal holiday" also means "a Statewide legal holiday in the State where such office is located." Id.

10. Under the facts of this case, state holidays are irrelevant since the Tax Court is located in the District of Columbia.

1. Treasury Regulation § 301.7503-1 Refers to the D.C. Code.

11. The regulations clarify and support the plain meaning of Section 7503. "For the purpose of section 7503, the term legal holiday includes the legal holidays in the District of Columbia as found in D.C. Code Ann. 28-2701." Treas. Reg. § 301.7503-1(b).

12. Section 28-2701 of the D.C. Code Annotated is entitled "Holidays designated--Time for performing acts extended." The statute reads as follows:

The following days in each year, namely, New Year's Day, January 1; Dr. Martin Luther King, Jr.'s Birthday, the third Monday in January; Washington's Birthday, the third Monday in February; District of Columbia Emancipation Day, April 16; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veteran's Day, November 11; Thanksgiving Day, the fourth Thursday in November; Christmas Day, December 25; every Saturday, after twelve o'clock noon; any day appointed by the President of the United States as a day of public

feasting or thanksgiving; and the day of the inauguration of the President, in every fourth year, are holidays in the District for all purposes.

D.C. Code Ann. § 28-2701.

13. Section 28-2701 of the D.C. Code is substantially similar to the holidays set forth in the U.S. Code, the Tax Court Rules, and the Federal Rules of Civil Procedure. Compare D.C. Code Ann. § 28-2701, with 5 U.S.C. 6103(a) (setting forth "legal public holidays"), and T.C. Rule 25(b) ("District of Columbia Legal Holidays"), and Fed. R. Civ. P. 6(a)(6)(A).

14. Thus, there is no explicit language in Section 7503, Treas. Reg. § 301.7503-1, D.C. Code Ann. § 28-2701, or Tax Court Rule 25 to support the proposition in the Court's Order that the closure of federal offices or courts due to inclement weather is to be construed as a "legal holiday." The interpretation of Section 7503 as set forth in Treasury Regulation § 301.7503-1 has been described by this Court as "a proper interpretation of the statute." Orrock v. Comm'r, T.C. Memo. 1982-293, 1982 WL 10591, at *3.

2. There Was No Executive Order Concerning Winter Storm Octavia or Declaring February 17, 2015, a Holiday in the District of Columbia.

15. The snow day was not a "day appointed by the President of the United States as a day of public feasting or

thanksgiving." D.C. Code Ann. § 28-2701; see also 5 U.S.C. § 6103(b); T.C. Rule 25(b); Fed. R. Civ. P. 6(a)(6)(B).

16. The President did not issue an Executive Order concerning the winter storm that affected Washington, D.C., on February 17, 2015. According to the White House website, the President issued an Executive Order on February 13, 2015, and the next one was issued on March 19, 2015, neither of which had anything to do with Winter Storm Octavia. See White House, <https://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders> (last visited Sep. 29, 2015); see also Exec. Order No. 13691, 80 Fed. Reg. 9,349 (Feb. 20, 2015) ("Promoting Private Sector Cybersecurity Information Sharing"); Exec. Order No. 13693, 80 Fed. Reg. 15,871 (Mar. 25, 2015) ("Planning for Federal Sustainability in the Next Decade").

17. There is no indication that the D.C. Council issued an administrative order declaring the snow day a "holiday." The entry on the D.C. Council's website for February 17, 2015, reads simply: "DC Council: Closed due to inclement weather" and "Due to inclement weather, the Council will be closed today." See D.C. Council, News, <http://dccouncil.us/news/P40> (select "Read More" under "February 17, 2015").

18. There is similarly no indication that the mayor of Washington, D.C., issued an executive order on or about February

17, 2015, regarding the winter storm. See Sec'y D.C., D.C. Mun. Regs. & D.C. Reg., available at <http://www.dcregs.dc.gov/> (under heading "Search the Mayor's Orders," select "February, 2015"). The mayor's orders consist of appointments and delegations unrelated to the winter storm.

19. On February 16, 2015, D.C. Mayor Muriel Bowser announced that a "snow emergency" would go into effect in the District of Columbia. See DC Snow Emergency Goes Into Effect at 7 am on Tuesday, February 17, District Snow Team (Feb. 16, 2015), <http://snow.dc.gov/release/dc-snow-emergency-goes-effect-7-am-tuesday-february-17>.

20. Pursuant to the "snow emergency," District Government offices were closed on February 17, 2015. See Bowser Administration to Close District Government on Tuesday, February 17, Exec. Office of the Mayor (Feb. 17, 2015), <http://dc.gov/release/bowser-administration-close-district-government-tuesday-february-17>.

B. Under the D.C. Regulations, a "Snow Emergency" Is Distinct from a "Holiday."

21. In its Order, the Court treats the closing "on Tuesday, February 17, 2015, because of a winter snowstorm as a legal holiday in the District of Columbia for purposes of section 7503." Order p. 12. It is legally erroneous to construe a

"snow emergency" in the District of Columbia as a "legal holiday in the District of Columbia."

22. The mayor of the District of Columbia "may declare an emergency whenever he or she deems it to be appropriate and in the public interest." D.C. Mun. Regs. tit. 6-B, § 1270.2. During such a period, D.C. government workers are on "administrative leave," not holiday pay. See id. § 1273.4.

23. "Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless context dictates otherwise." Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979).

24. It does not appear that the term "snow emergency" is defined in the D.C. Code or Regulations. However, when the terms "snow emergency" and "holiday" appear together, they are used in the disjunctive sense, thereby implying that they are distinct from one another. See, e.g., D.C. Mun. Regs. tit. 31 § 102.6 ("The Commission, its panels, and committees shall not meet on holidays, during the last two (2) weeks in December, or on snow emergency days as declared by the Mayor.") (emphasis added); id. § 202.2 ("The Panel shall not meet on holidays, during the last two (2) weeks in December, or on snow emergency days as declared by the Mayor.") (emphasis added); id. § 302.2 (same). Thus, if a "snow emergency" were the same thing as a

"holiday," there would be no need to distinguish the two terms in the disjunctive.

25. The remaining D.C. Regulations in which the term "snow emergency" appears do not mention or pertain to holidays. See D.C. Mun. Regs. tit. 18, § 2219 (severe weather traffic controls on snow emergency routes); id. § 2406.18(e) (prohibiting car-sharing vehicles from parking where prohibited during snow emergencies); id. § 2417 (snow emergency parking regulations); id. § 2423 (street cleaning parking provisions); id. § 2600 (civil fines for motor vehicle infractions); id. § 2601 (parking and other non-moving infractions); id. § 4024 (snow emergency routes); id. tit. 24, § 532 (vending locations); id. § 803 (special traffic regulations); id. tit. 31, § 602 (taximeters); id. § 801 (passenger rates and charges); id. § 804 (snow emergency fares for taxicabs); id. § 805 (disposition of disputed snow emergency fares).

26. Judge Posner's opinion in Hart v. Sheahan, 396 F.3d 887 (7th Cir. 2005), offers further support to distinguish a snow emergency from a legal holiday. In Hart, the court of appeals distinguished a snow emergency from the scenario where the President declares a holiday via an Executive Order. The court noted that there is a "presumption that [the President] has declared a legal holiday" when he/she "closes the government for

celebratory or commemorative reasons . . . rather than because of a budgetary crisis . . . or for a snow emergency, terrorist act, or some other *force majeure*." Id. at 891 (emphasis added).

27. Accordingly, there is no legal basis in the D.C. Code or Regulations to construe a "snow emergency" as a "legal holiday in the District of Columbia."

C. Since the Court's Closure Due to the Winter Storm Was Neither Enacted Nor Commemorative, It Does Not Fall Within the Plain Meaning of the Term "Legal Holiday."

28. By concluding that the snow day was a "legal holiday," the Court ignored the term's plain meaning. In order to attain "legal holiday" status, there must be legislative or executive enactment, usually for a commemorative purpose. Neither element is present for the snow day at issue in this case.

29. Furthermore, the Court erred to the extent it relied on the legislative history of Section 7503 to support its conclusion that the snow day was a legal holiday. First, there is no need to resort to the legislative history of Section 7503 because the meaning of legal holiday in the District of Columbia is clear on its face. See Dodd v. United States, 545 U.S. 353, 359 (2005); Caminetti v. United States, 242 U.S. 470, 485 (1917); S.H. ex rel. Derrell v. Lower Merion Sch. Dist., 729 F.3d 248, 259 (3d Cir. 2013) ("Legislative history has never been permitted to override the plain meaning of a statute.").

Second, even if the Court resorts to legislative history, it supports Respondent's position. The incremental changes, as evidenced by the legislative history of the statute, indicate that the statutory terms should not be extended beyond their plain meaning.

1. Enactment Is a Condition Precedent for "Legal Holiday" Status.

30. Assuming the term "legal holiday" in section 7503 is not clear on its face, "[i]t is appropriate to consult dictionaries to discern the ordinary meaning of a term not explicitly defined by statute or regulation." Am. Express Co. v. United States, 262 F.3d 1376, 1381 n.5 (Fed. Cir. 2001); see Muscarello v. United States, 524 U.S. 125, 128-32 (1998); Metro One Telecomms., Inc. v. Comm'r, 704 F.3d 1057, 1061 (9th Cir. 2012); Veriha v. Comm'r, 139 T.C. 45, 50 (2012); O'Donnabhain v. Comm'r, 134 T.C. 34, 64-65 (2010).

31. The term "legal holiday" is defined as follows:

1. A day designated by law as exempt from court proceedings, issuance of process, and the like. Legal holidays vary from state to state. -- Also termed *nonjudicial day*. 2. An official holiday on which most government offices and banks are closed. -- Sometimes shortened to *holiday*.

Black's Law Dictionary 1032 (10th ed. 2014) (underscored emphasis added; italicization in original).

A day designated by law as exempt from judicial proceedings, service of process demand and protest of commercial paper, etc. A day designated by legislative enactment for purpose within meaning of term "holiday."

Black's Law Dictionary 1040 (rev. 4th ed. 1968) (emphasis added).

32. The primary dictionary definitions for the term "holiday" also suggest that the designation is connected to commemoration of an event or person. See, e.g., Cambridge American English Dictionary, <http://dictionary.cambridge.org/us/dictionary/english/holiday> (last visited Sep. 21, 2015) ("a day for celebration when many people are allowed to stay away from work or school"); Merriam-Webster's Collegiate Dictionary 552 (10th ed. 1993) ("a day on which one is exempt from work; *specif[ically]*: a day marked by a general suspension of work in commemoration of an event" (italicization in original)); The Random House College Dictionary 631 (rev. ed. 1980) ("a day fixed by law or custom on which ordinary business is suspended in commemoration of some event or person"); see also Hart v. Sheahan, 396 F.3d 887, 891 (7th Cir. 2005).

33. Although a legal holiday is usually commemorative, it does not have to be. See, e.g., Anselmo v. James, 449 F. Supp. 922, 924 (D. Mass. 1978) (discussing governor's executive order declaring legal holidays in counties affected by a blizzard).

However, legislative or executive enactment is a necessary element in order for there to be a legal holiday. See Hart, 396 F.3d at 890; García-Velázquez v. Frito Lay Snacks Caribbean, 358 F.3d 6, 9 (1st Cir. 2004); In re Cascade Oil Co., 848 F.2d 1062, 1064 (10th Cir. 1988); Pleasant Valley Wine Co. v. Commissioner, 14 T.C. 519, 521 (1950).²

34. Under the facts of this case, there was no enactment or proclamation of any kind that would confer "legal holiday" status on the snow day at issue. It certainly is not mentioned among the holidays listed in the United States Code, D.C. Code, Tax Court Rules, or the Federal Rules of Civil Procedure. See supra Part I.A. There was also no executive or administrative order by the President or the Congress declaring it such.

² The process of enactment is true even in the context of local court rules. For example, in García-Velázquez, the court cited the Federal Circuit Court's Local Rule 26(a) and noted "that jurisdictions wishing to count the days on which the clerk's office is closed as legal holidays have enacted local rules to this effect." García-Velázquez, 358 F.3d at 9 (emphasis added). In this context, the "enactment" is the notice and comment process for amendment of local court rules. The courts of appeals can enact local rules governing practice "after giving appropriate notice and opportunity for comment." Fed. R. App. P. 47(a)(1). The same is true of the Tax Court. See T.C. Rule 1(a) ("The United States Tax Court, after giving appropriate public notice and an opportunity for comment, may make and amend rules governing its practice and procedure."). Like the situation in García-Velázquez, the Tax Court has no rule where closure of the clerk's office is counted as a holiday.

2. The Legislative History of Section 7503 Does Not Support Extending "Legal Holiday" Beyond Its Plain Meaning.

35. Contrary to the Court's conclusion, the legislative history of Section 7503 does not support extending the term "legal holiday" to include court inaccessibility due to administrative closure. While resort to legislative history is unnecessary given the plain meaning of Section 7503, Congress knows how to add language that would include days when the Tax Court is inaccessible. Its failure to do so evidences Congress's intention not to add such days. See Omni Capital Int'l v. Rudolf Wolff & Co., 484 U.S. 97, 106 (1987).

36. The Court discussed the legislative history of Section 7503 on pages 12 through 14 of its Order. Under Section 274(a) of the Revenue Act of 1924, ch. 234, 43 Stat. at 297, if the last day to file a petition fell on a Sunday, the Board of Tax Appeals lacked jurisdiction to act on a petition that was received the following day. Section 274(a) was changed with the passage of the Revenue Act of 1926, ch. 27, 44 Stat. at 55, which did not count Sunday as the last day on which a taxpayer could timely file a petition with the Board. The provision was expanded yet again in Section 272(a) of the Revenue Act of 1934, ch. 277, 48 Stat. at 741, so as to not include legal holidays in the District of Columbia along with Sundays as the last day to

timely file a petition. Saturday was then added to the list in the International Organizations Immunities Act, Pub. L. No. 79-291, § 203, 59 Stat. at 673 (1945). The Court included a passage from the Senate Finance Committee Report explaining that Saturdays were added because "they constitute no part of the administrative workweek" and thus "it is desirable that [they] also be treated in a like manner." S. Rep. No. 79-861, at 7 (1945).³

37. Each change was clear on its face, leaving no ambiguity as to the affected days. These changes in the law were incremental and made pursuant to explicit Congressional amendments, not inferred legislative intent. For example, in Southern California Loan Ass'n v. Commissioner, 4 B.T.A. 223 (1926), the Board discussed the failed attempt to include a holiday provision in the Revenue Act of 1926. Id. at 237-38. While it was clear that the same rationale applied to holidays, the Board did not attempt to extend the safety provision beyond the text of the statute so as to resurrect the language in the original bill. See id. at 238. As a result, the Board upheld the holding of Satovsky v. Commissioner, 1 B.T.A. 22 (1924) (if

³ See also Harold Dubroff & Brant J. Hellwig, The United States Tax Court: An Historical Analysis 291-93 (2d ed. 2014) (discussing early developments with respect to identifying the termination of the filing period for a Tax Court petition).

the last day fell on a Sunday, the Board lacked jurisdiction to act on a petition that was received the following day).

38. On page 13 of its Order in footnote 9, the Court mentions Pleasant Valley Wine Co. v. Commissioner, 14 T.C. 519 (1950), but only as a historical reference to the Tax Court's establishment of the five-day workweek. However, the substantive issue in Pleasant Valley is noteworthy for purposes of the issue in this case. Pleasant Valley involved the timeliness of the taxpayer's claim for refund, which under the law at the time had to be filed by Saturday, November 15, 1947. Id. at 520. The taxpayer mailed the claim on Friday, November 14, 1947, but what was then the Bureau of Internal Revenue was not open for business on Saturday, causing the claim to arrive on Monday, February 17, 1947. Id. Since this was after 1945, Saturdays along with Sundays and legal holidays were not counted for purposes of the last day to file a Tax Court petition; however, the same was not true with respect to claims for refund. Id. at 520-21. The taxpayer argued that since the Bureau was closed on Saturday, it was "for all practical purposes" no different from Sunday or a legal holiday, and that it should be construed as such. Id. at 520.

39. The Tax Court rejected the taxpayer's argument, noting that "[a] legal holiday is one declared by law to be a holiday"

and referred to the Tax Court Rules for "a list of legal holidays in the District of Columbia and the acts declaring them to be such." Id. at 521. While the Court acknowledged "that Congress had the subject in mind" with respect to the filing of Tax Court petitions, it refused to extend the rationale for refund claims absent a clear statutory basis. Id.

40. Simply put, there was no legislative or executive action by which February 17, 2015, was "designated by law" to be an "official"--i.e., "enacted"--holiday in the District of Columbia. Rather, the D.C. mayor simply declared a "snow emergency," which is not a "holiday." See supra Part I.B. Because of the snow emergency, the Office of Personnel Management closed federal executive agencies, and the Tax Court followed suit.

41. Thus, the Court erred in concluding that under Section 7503, a snow emergency served to extend the time for filing a Tax Court petition set forth in Section 6330(d)(1).

D. "Inaccessibility of the Clerk's Office" Is Not the Same as "Legal Holiday."

42. A "legal holiday" under Fed. R. Civ. P. 6(a) is not synonymous with "inaccessibility of the clerk's office" under the same Rule. First, the "inaccessibility of the clerk" provision of Fed. R. Civ. P. 6(a)(3) is distinct from the Rule's

"legal holiday" provisions in Fed. R. Civ. P. 6(a)(1)(B) and (a)(6). Second, inaccessibility of the clerk's office due to a court's administrative decision to close on a particular day does not confer holiday status, because courts lack the authority to declare holidays.

1. FRCP 6(a)'s "Inaccessibility of the Clerk" Provision Is Separate from the Rule's Provision Defining "Legal Holiday."

43. Since the Federal Rules of Civil Procedure "are a legislative enactment," courts use "the 'traditional tools of statutory construction' . . . in order to construe their provisions." Beech Aircraft Corp. v. Rainey, 488 U.S. 153, 163 (1988) (quoting INS v. Cordoza-Fonseca, 480 U.S. 421, 446 (1987)); see 28 U.S.C. §§ 2072-2074; Republic of Ecuador v. Mackay, 742 F.3d 860, 864 (9th Cir. 2014); see also Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc., 498 U.S. 533, 540-41 (1991) (conducting a plain meaning analysis for the purpose of rule interpretation).

44. The canon *expressio unius est exclusion alterius* stands for the proposition "that '[w]hen a statute limits a thing to be done in a particular mode, it includes a negative of any other mode.'" Longview Fibre Co. v. Rasmussen, 980 F.2d 1307, 1312-13 (9th Cir. 1992) (quoting Raleigh & Gaston Ry. v. Reid, 80 U.S. (13 Wall.) 269, 270 (1871) (alteration in

original)); see also Rand v. Comm'r, 141 T.C. 376, 387 (2013) (“[I]f a statute provides specific exceptions to a general rule, we may infer that Congress intended to exclude any further exceptions.”).

45. “[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” Russello v. United States, 464 U.S. 16, 23 (1983) (quoting United States v. Wong Kim Bo, 472 F.2d 720, 722 (5th Cir. 1972)).

46. Under Rule 6 of the Federal Rules of Civil Procedure, the definition of “legal holiday” is contained in a completely separate provision from that which governs “inaccessibility of the clerk’s office.” The definition of “legal holiday” is set forth in Fed. R. Civ. P. 6(a)(6), which is entitled “‘Legal Holiday’ Defined.” This provision also uses the word “means” when defining “legal holiday,” which indicates that the three categories of holidays set forth in subsections (A), (B), and (C) are exhaustive. See Helvering v. Morgan’s Inc., 293 U.S. 121, 125 n.1 (1934) (noting that “where ‘means’ is employed, the term and its definition are to be interchangeable equivalents”); United States v. Philip Morris USA Inc., 566 F.3d 1095, 1115

(D.C. Cir. 2009) (discussing use of the terms "means" versus "includes" with respective exhaustive and non-exhaustive lists in a statutory scheme).

47. The provision governing "inaccessibility of the clerk's office" is set forth in Fed. R. Civ. P. 6(a)(3). This provision covers two scenarios--inaccessibility on the last day for filing or during the last hour for filing. R. 6(a)(3)(A)-(B). If inaccessibility occurs during either of these scenarios, "the time for filing is extended to the first accessible day . . . or . . . to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday." Id. (emphasis added).

48. Based on the plain language of the Rule, it is clear that "inaccessibility of the clerk's office" is distinct from "legal holiday." First, inaccessibility is not included under the exhaustive list of holidays set forth in Fed. R. Civ. P. 6(a)(6). Second, if the term "legal holiday" included days the clerk's office was inaccessible, then Fed. R. Civ. P. 6(a)(3) would not be needed, as legal holidays are already excluded from computation of time in Fed. R. Civ. P. 6(a)(1)(C) when they fall on the last day for filing. "It is a well-accepted canon of construction that a statute ought to be construed so that no clause, sentence, or word is rendered superfluous, void, or

insignificant." Guardian Indus. Corp. v. Comm'r, 143 T.C. 1, 14-15 (2014).. Thus, it stands to reason that "inaccessibility" under Federal Rule 6 is different from a "legal holiday."

49. Therefore, it was erroneous for the Court to conclude that "inaccessibility of the clerk's office" was the functional equivalent of a "legal holiday" for purposes of Section 7503.

2. When a Court Administratively Decides to Close on a Particular Day, It Does Not Declare a Holiday.

50. When a court makes an administrative decision to close on a particular day, it does not "declare a holiday." The declaration of a holiday requires legislative or executive action, not judicial action.

51. This point was made clear in García-Velázquez v. Frito Lay Snacks Caribbean, 358 F.3d 6 (1st Cir. 2004). In that case, the plaintiffs' appeal was untimely because they had filed a motion under Fed. R. Civ. P. 59(e) that was one day late. Id. at 8-9. The plaintiffs argued that New Year's Eve should be considered a "legal holiday" because the clerk's office was closed for business by order of the chief judge. Id. at 9. The court rejected the plaintiffs' argument, noting that New Year's Eve was not among the holidays listed in Fed. R. Civ. P. 6(a) and that there was no evidence that the President, Congress, or the Governor or Legislature of Puerto Rico had declared New

Year's Eve to be a holiday. Id. at 9. In explaining its rationale, the court noted that the judiciary lacks the authority to declare a holiday:

Appellants urge us to read Rule 6(a) to encompass days in which the clerk's office is closed for business by order of the Chief Judge. But the plain language of the Rule precludes such a reading. The Rule, on its face, refers to a "legal holiday" as a day appointed by the President, Congress, or the relevant state. It does not grant this power to the federal judiciary.

Id. (emphasis added); see also Hart v. Sheahan, 396 F.3d 887, 890 (7th Cir. 2005) ("The closure order had come from the chief judge of the district court, who of course is not the President and did not purport to be declaring a legal holiday and anyway lacked the authority to do so." (discussing Latham v. Dominick's Finer Foods, 149 F.3d 673 (7th Cir. 1998))).

52. The issue in In re Cascade Oil Co., 848 F.2d 1062 (10th Cir. 1988), also involved the timeliness of an appeal. Under the 30-day jurisdictional time period set forth in Fed. R. App. P. 4(a), the appellant should have filed the notice of appeal on November 28, 1987. Id. at 1063. However, it was filed on November 30, 1987. Id. The appellant argued that November 27, 1987 (the day after Thanksgiving) was a legal holiday because the chief justice of the Supreme Court of Kansas had issued an administrative order closing all Kansas state

courts that day. Id. Even though the federal District Court was open for business that day, the appellant took the position that the closure of the state courts was a "state holiday" within the meaning of Fed. R. App. P. 26(a). Id. The court rejected this argument:

Of particular relevance is the inclusion of *statutory* state holidays within the term "legal holiday." "Statutory state holidays" are, as the term implies, those designated by the legislature through the enactment of statutes. Obviously, courts cannot establish statutory state holidays. Consequently, the Supreme Court for the State of Kansas cannot establish a legal holiday within the meaning of Fed.R.App.P. 26(a).

Kan.Stat.Ann. § 60-206 (1983) is the Kansas statute that governs the computation of time regarding the state rules of civil procedure. This statute provides, in pertinent part: "'Legal holiday' includes any day designated as a holiday by the congress of the United States, or by the legislature of this state." The Kansas state legislature has enumerated the state holidays in Kan.Stat.Ann. § 35-107 (1986). The day following Thanksgiving Day is not among them.

Id. at 1064; see also Hart, 396 F.3d at 890 (suggesting that court closures due to inclement weather are the same as those that were at issue in García-Velázquez and Cascade Oil).

53. In this case, the Court stated in its Order that the closure due to Winter Storm Octavia would be "treat[ed] . . . as a legal holiday in the District of Columbia for purposes of section 7503." However, this "treatment" constitutes legal

error. Legislative or executive enactment is a condition precedent for a day to be considered a legal holiday. There was no such enactment for February 17, 2015, the date of the snow emergency. Accordingly, there is no basis for the Court to treat the snow emergency as a legal holiday.

54. Therefore, the Court erred in concluding that February 17, 2015, was a legal holiday and in denying Respondent's Motion to Dismiss for Lack of Jurisdiction.

E. The Court Erred in Relying on *Winkler*, Which Is Inapposite to the Facts of This Case.

55. In its Order, the Court relies on *Winkler v. Commissioner*, 56 T.C. 844 (1971), to support its conclusion that the snow day was a legal holiday. However, the Court's interpretation of the holding of *Winkler* is overly broad and does not apply to the facts of this case.

56. The Court's Order summarized the basic facts of *Winkler* as follows:

The issue in *Winkler* was whether February 15, 1971, the third Monday in February of that year, was to be considered a legal holiday in the District of Columbia pursuant to a recently enacted Federal law providing for uniform observance of certain legal public holidays on Mondays, notwithstanding the D.C. Code that, at the time, provided for the observance of the holiday on February 22, George Washington's actual birthday. Ultimately the Court concluded that February 15, 1971, should be considered a legal holiday in the District of Columbia. But notably, in the final analysis the Court regarded as determinative the fact

that the Court was closed for business and therefore unable to receive and file petitions on that day.

Order p. 15.

57. The Court in Winkler merely acknowledges that February 15, 1971, was a legal holiday in the District of Columbia because its codification in 5 U.S.C. § 6103 clearly established that it was the "law of the United States" and therefore was meant to apply to the District of Columbia. Winkler, 56 T.C. at 845-46.

58. In reaching its final analysis, the Court in Winkler stated that it is "patently clear that the purpose underlying section 7503 is to extend the time for filing a document when the last day for filing would, under the ordinary rule, be a day on which the office in which the document had to be filed was closed." Id. at 847 (emphasis added). The Court continued stating that "the functional purpose of section 7503, as well as its literal mandate, is fulfilled by treating such a day as a legal holiday." Id.

59. The day at issue in Winkler, Washington's Birthday, would necessarily be a legal holiday in the District of Columbia by virtue of its inclusion in the U.S. Code as a legal holiday. Both the U.S. Code and the D.C. Code at the time were referring to the same holiday--Washington's Birthday. Although the local

D.C. Code had not yet been amended to reflect the holiday as the third Monday in February, in this instance this day was still the law of the United States at the time. The "functional purpose" of Section 7503 (the extension of the time for filing a document when the last day falls on a legal holiday due to office closure) and the "literal mandate" (that the rule applies to legal holidays) were both clearly applicable to February 15, 1971, due to 5 U.S.C. § 6103(a).

60. In this case, the question is whether February 17, 2015, the day Winter Storm Octavia struck the District of Columbia, "would, under the ordinary rule, be a day on which the office in which the document had to be filed was closed." Winkler, 56 T.C. at 847.

61. Clearly, it would not. The snow day fails to meet what the Court in Winkler called the "literal mandate" of Section 7503. Id. The text of Section 7503 says "legal holiday." The closure of the Court on February 17, 2015, because of a snow emergency was not codified as a legal holiday in any code or regulation, nor was it declared a legal holiday pursuant to an executive or administrative order.

62. Therefore, Section 7503 is not applicable to the facts of this case, and the Court erroneously denied Respondent's Motion to Dismiss for Lack of Jurisdiction.

F. Prior Case Law Involving Inclement Weather Does Not Support the Court's Conclusion.

63. Similar cases involving inclement weather do not support the Court's conclusion regarding the applicability of Section 7503.

64. In Harwood v. Commissioner, T.C. Memo. 1979-54, 1979 WL 3150, the IRS mailed a notice of deficiency to taxpayers in Massachusetts. Id. at *1. After receiving the notice of deficiency, the taxpayers gave it to their accountant, who was also in Massachusetts. Id. The taxpayers then traveled to Florida, having made arrangements with their accountant to forward the petition to them in Florida for their execution and mailing to the Court for filing. Id. On the day the accountant placed the petition in the mail, much of the northeastern United States was struck by a blizzard, which suspended the transit of mail for two days and closed regional airports. Id. As a result, the petition was postmarked 91 days after the notice of deficiency was mailed, and the Court received the petition 94 days after the notice was mailed. Id. The IRS filed a motion to dismiss for lack of jurisdiction, which the Court granted. Id. at *1-2. After noting that it lacks equity jurisdiction, the Court explained its rationale:

Petitioners place the blame for the late filing of their petition here solely on the blizzard. But, they have some responsibility for having chosen to be in Florida during this critical period in the matter of their tax liabilities for these years; their accountant has some responsibility for not having prepared and mailed the petition to them for execution earlier; and they all have some responsibility for not taking action to assure timely filing of a substitute for the petition which was in the mails to petitioners when the blizzard hit.

Id. at *2. In explaining its rationale, the Court in Harwood cited Anselmo v. James, 449 F. Supp. 922 (D. Mass. 1978).

65. In Anselmo, the IRS seized and then sold the taxpayer-plaintiff's land at a public auction in order to satisfy a tax debt on October 12, 1977. Id. at 923-24. Under I.R.C. § 6337(b), the taxpayer had the statutory right to redeem the land within 120 days of the sale by paying the buyer-defendant the amount paid plus interest. Id. at 924. The 120-day period expired on February 9, 1978. Id. at 924 n.7. The taxpayer intended to redeem the land on February 7, 1978, but was unable to travel to the buyer's residence because of the Great Blizzard of 1978. Id. at 924. The blizzard rendered travel impossible and caused widespread flooding, high winds, and deep snow. Id. Due to the severe storm, the governor of Massachusetts proclaimed a state of emergency and issued an executive order, declaring February 7 through February 12, 1978, to be legal

holidays in certain counties affected by the storm. Id. On February 13, 1978, the taxpayer was finally able to reach the buyer's residence to tender the money to redeem the land, but both the buyer and the IRS refused the tender attempts because the 120-day period expired on February 9, 1978. Id. The taxpayer then commenced a suit in District Court for declaratory and injunctive relief, asking the court to decide whether the Great Blizzard of 1978 extended the period for redemption of real estate seized and sold by the IRS. Id. at 923.

66. The taxpayer argued that the redemption period should be extended under I.R.C. § 7503 because the buyer was unreachable until February 13, 1978, and because the governor had declared legal holidays for February 7 through February 12, 1978. Id. at 926. The court rejected the taxpayer's argument, noting that the governor's declaration only applied to certain counties and therefore that it was not "statewide." Id. at 927. Accordingly, the holiday did not fall within Section 7503, and therefore the redemption period was not extended. Id. Like the Tax Court in Harwood, the District Court in Anselmo explained its rationale:

The result here is not as harsh as it may seem at first blush. It should be kept in mind that from the time of the tax sale, plaintiffs had 120 days to redeem the Land. By their own allegation, they admit having made no attempt to do so until February 7, the 118th day. Having waited so long, and taken the risk of unforeseen consequences of their own delay, they should not now be heard to complain of the Great Blizzard.

Id.

67. The District Court also rejected the taxpayer's equity argument, noting that "[t]he broad equitable powers of the federal [district] courts do not include the power to extend the time for redemption under the internal revenue laws." Id. at 926.

68. In Schake v. Commissioner, T.C. Memo. 2002-262, 2002 WL 31269604, the taxpayer claimed "that he was unable to file a timely petition with the Court due to inclement weather in Nebraska and that he was informed by Court personnel that he would be given a grace period to file his petition." Id. at *3. The Court rejected the taxpayer's argument, noting that "the Court has no authority to extend the statutory period for filing a timely petition 'whatever the equities of a particular case may be and regardless of the cause for its not being filed within the required period.'" Id. (quoting Axe v. Comm'r, 58 T.C. 256, 259 (1972)).

69. In the present case, there is no reason to deviate from the rationales set forth in Harwood, Anselmo, or Schake. While these cases do not involve closure of a court in the District of Columbia, "the term 'legal holiday' . . . also means a Statewide legal holiday in the State where such [IRS] office is located" if the particular "act" required under the Internal Revenue Code is to be performed outside of Washington, D.C. I.R.C. § 7503.

70. In Harwood, Anselmo, or Schake, the taxpayers claimed that inclement weather prevented them from performing the "act" required of them. Nevertheless, neither the Tax Court nor the District Court were persuaded to expansively define a "legal holiday" to include a snow day. Furthermore, extending statutory terms beyond their plain meaning in order to ameliorate a harsh outcome is not the correct tax result because the Tax Court lacks equity jurisdiction to extend the time to file a petition. See Comm'r v. Gooch Milling & Elevator Co., 320 U.S. 418, 422 (1943); Miller v. United States, 784 F.2d 728, 731 n.4 (6th Cir. 1986) (per curiam); Rawls Trading, L.P. v. Comm'r, 138 T.C. 271, 292 (2012); Axe, 58 T.C. at 259.

71. As the Court noted in its orders for prior inclement weather cases and the government shutdown, these results can be avoided by utilizing the U.S. Postal Service or the delivery certificate of an approved private express delivery service.

Had Petitioner utilized the U.S. Postal Service or a designated private delivery service to send his petition, the petition would have been timely under Section 7502 and the inclement weather in the District of Columbia would not have mattered.⁴ Instead, Petitioner used a FedEx service that was not a designated private delivery service at the time, and he waited until February 13, 2015--four days before expiration of the 30-day filing period--to send his Tax Court petition.

72. Based on the case law and the Court's prior orders in factually similar cases, there is no basis for relief under Section 7503 by construing the snow day as a "legal holiday."

G. Extension of the Term "Legal Holiday" to Include Inclement Weather Is Far Reaching and Creates Potentially Unforeseen Consequences.

73. Extending the term "legal holiday" beyond its plain meaning to include "snow emergencies" or more generally "inaccessibility" is far reaching and creates potential unforeseen consequences with respect to "acts" required to be performed under the Internal Revenue Code.

74. "Section 7503 applies to acts to be performed by the taxpayer." Treas. Reg. § 301.7503-1(a). This includes "the

⁴ See Estate of Wood v. Comm'r, 909 F.2d 1155, 1158 (8th Cir. 1990) (noting that Section 7502 was enacted to eliminate "the vagaries of postal delivery, which delivery varies from place to place and from season to season" (emphasis added)); see also Miller, 784 F.2d at 730.

filing of a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by such Court."

Id.

75. However, Section 7503 governs acts beyond the filing of Tax Court petitions, such as: (1) "the filing of any return of, and the payment of, any income, estate, or gift tax"; (2) "the filing of a claim for credit or refund of any tax"; (3) "acts to be performed by the Commissioner, a district director, or the director of a regional service center (such as, the giving of any notice with respect to, or making any demand for the payment of, any tax; [and] the assessment or collection of any tax)."

Id.

76. Since the term "legal holiday" also includes statewide legal holidays, extension of the term to include inclement weather events opens the door to potential administrative disputes and litigation as to whether local weather events that cause inaccessibility constitute "holidays" under the Internal Revenue Code. More specifically, in disputes over the timeliness of filing, reporting, issuance of notices, and assessments, the IRS and the courts could end up having to do an inclement weather analysis for the District of Columbia or the relevant internal revenue district in order to determine whether bad weather or a closure of some kind rose to the level of a

"legal holiday." Such a result would be untenable for administering and adjudicating the internal revenue laws.

77. Therefore, the Court's conclusion of law in its Order that a snow emergency constitutes a legal holiday under Section 7503 is clearly erroneous.

II. TAX COURT RULE 25 GOVERNS COMPUTATION OF TIME.

78. In its Order, the Court mentions the "inaccessibility of the clerk" provision of Fed. R. Civ. P. 6(a)(3) to further rationalize its conclusion that a snow day should be likened to a legal holiday under Section 7503. As previously discussed, "inaccessibility of the clerk" is not synonymous with a "legal holiday." See supra Part I.D.

79. Respondent does, however, agree that Fed. R. Civ. P. 6(a)(3) and Tax Court Rule 25 do have relevance as an alternative theory for determining whether the Tax Court has jurisdiction--specifically, whether under Tax Court Rule 1(b), the Court should rely on inaccessibility pursuant to Fed. R. Civ. P. 6(a)(3) in order to compute the 30-day jurisdictional time period.

80. The Federal Rules of Civil Procedure should not govern the matter at hand. Tax Court Rule 25 governs computation of time. Fed. R. Civ. P. 6(a)(1) provides that "[t]he following rules apply in computing any time period specified in these

rules, in any local rule or court order, or in any statute that does not specify a method of computing time." Sections 7502 and 7503 are statutes that specify methods of computing the timely filing of a Tax Court petition. Thus, Tax Court Rule 1(b) would be an inappropriate vehicle to defer to the Federal Rules since Section 7503 prevents the inaccessibility provision in Fed. R. Civ. P. 6(a)(3) from being suitable to cover the matter at hand. This is likely the reason the Court in this case merely used Fed. R. Civ. P. 6(a)(3) as further support for its position that a snow day should be considered a legal holiday, rather than adopting it directly through Tax Court Rule 1(b). Furthermore, the Court has never invoked inaccessibility in factually similar cases where jurisdiction was at issue.

A. The 30-Day Time Period to File a Petition In a CDP Case Is Jurisdictional.

81. The time period at issue in this case a jurisdictional 30-day time period set forth in I.R.C. § 6330(d)(1) for lien and levy actions. A taxpayer "may, within 30 days of a determination under [Sections 6330 and 6330], appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter)." I.R.C. § 6330(d)(1). "The 30-day period provided in section 6330(d)(1) for the filing of a petition for review is jurisdictional and cannot be

extended; this Court must dismiss for lack of jurisdiction any case in which a petition for review is deemed filed more than 30 days after the notice of determination is issued." Gray v. Comm'r, 138 T.C. 295, 299 (2012); see Craig v. Comm'r, 119 T.C. 252, 256 (2002). For lien and levy actions, "[t]he Court shall have jurisdiction . . . when the conditions of Code section 6320(c) or 6330(d), as applicable, have been satisfied." T.C. Rule 330(b); see T.C. Rule 13(b). "In all cases, the jurisdiction of the Court also depends on the timely filing of a petition." T.C. Rule 13(c); see id. (referencing I.R.C. §§ 6320, 6330, 7502).

82. In its Order, the Court noted that courts can consult rules of procedure as a means of interpreting of jurisdictional statutes. See Order p. 16 (quoting In re Swine Flu Immunization Prod. Liab. Litig., 880 F.2d 1439, 1445 (D.C. Cir. 1989)).

83. Respondent acknowledges that even with jurisdictional statutes, rules of procedure "do[] not 'expand' or 'enlarge' [a court's] jurisdiction"; rather, they "do nothing more than provide the court and the parties with a means of determining the beginning and end of a statute of limitations prescribed elsewhere in law." Bartlik v. U.S. Dep't of Labor, 62 F.3d 163, 166 (6th Cir. 1995). Such an approach would be appropriate so

long as the statute itself "does not specify a method of computing time." Fed. R. Civ. P. 6(a).

B. The "Inaccessibility" Provision of FRCP 6 Was Never Incorporated Into Tax Court Rule 25.

84. Thirty years have passed since the Federal Rules of Civil Procedure were amended to include an inaccessibility of the clerk provision. During this time period, no such provision was ever incorporated into the Tax Court Rules.

85. The Tax Court Rules "govern the practice and procedure in all cases and proceedings before the Court." T.C. Rule 1(b). If "there is no applicable rule of procedure, the Court or the Judge before whom the matter is pending may prescribe the procedure, giving particular weight to the Federal Rules of Civil Procedure to the extent that they are suitably adaptable to govern the matter at hand." Id.

86. Tax Court Rule 25 is based in part on Rule 6(a) of the Federal Rules of Civil Procedure. See T.C. Rule 25(a) note, 60 T.C. 1080 (1973); Order p. 17. However, unlike the Federal Rule, the Tax Court Rule lacks a provision for inaccessibility of the clerk. Under the Federal Rules of Civil Procedure, if the clerk's office is inaccessible, "then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday." Fed. R. Civ. P. 6(a)(3)(A). The

Federal Rule would "apply in computing any time period specified in [the Federal Rules of Civil Procedure], in any local rule or court order, or in any statute that does not specify a method of computing time." Fed. R. Civ. P. 6(a).

87. In 1985, Fed. R. Civ. P. 6(a) was "amended to acknowledge that weather conditions or other events may render the clerk's office inaccessible one or more days." Fed. R. Civ. P. 6(a) advisory committee's note, subdivision (b) (1985); see also id. (noting that the change was meant to bring the Rule in line with the inaccessibility provision added to the Federal Rules of Criminal Procedure in 1982).

88. In addition to the Federal Rules of Civil Procedure, inaccessibility provisions started to appear in federal procedural rules in the 1980s. See, e.g., Fed. R. Crim. P. 45 advisory committee's notes on 1982 amendments; Fed. R. App. P. 26 advisory committee's notes on 1989 amendments; Fed. R. Bankr. P. 9006 advisory committees notes, subdivision (a); id. advisory committee's notes on 2009 amendments, note to subdivision (a)(3) (deleting "weather or other conditions" in favor of inaccessibility generally); U.S. Ct. Fed. Cl. R. 6 (inaccessibility provision added at some point subsequent to 1982).

89. Despite the inclusion of inaccessibility provisions in other bodies of federal procedural rules, Tax Court Rule 25 was not amended to include such a provision in the years after 1982. For the post-1982 amendments to Tax Court Rule 25, see 81 T.C. 1050 (1984); 85 T.C. 1125 (1986); 90 T.C. 1357 (1988); 93 T.C. 861 (1989); 109 T.C. 546 (1997); 120 T.C. 521 (2003); 130 T.C. 393-94 (2009).

90. The issue in this case pertains to computation of time, which is governed by Tax Court Rule 25. During the past thirty years, there have been multiple amendments made to Tax Court Rule 25, none of which have incorporated an inaccessibility of the clerk provision. Even if the Court had wanted to adopt an inaccessibility provision, Sections 7502 and 7503 limit its ability to do so under the Rules of Practice and Procedure.

91. Accordingly, there is no reason to use Fed. R. Civ. P. 6(a) as further support that a snow day should be considered a legal holiday under Section 7503.

C. The Court Has Not Invoked FRCP 6's Inaccessibility Provision When Faced With Jurisdictional Issues In Factually Similar Cases.

92. In its Order, the Court stated that Tax Court Rule 25 "is silent regarding inaccessibility of the Tax Court clerk's office." Order p. 17. However, this silence tends to fade in

light of the Court's orders in Fitzpatrick v. Commissioner, Docket No. 4416-15S, Colabella v. Commissioner, Docket No. 1034-14S, McCoy v. Commissioner, Docket No. 2591-13S, and the Court's public notice regarding the federal government shutdown in October, 2013.

93. Despite fact patterns that are substantially similar to this case on the issue of jurisdiction and petition filing deadlines, the Court did not invoke inaccessibility or the Federal Rules of Civil Procedure in any of these cases. See infra Part III.

III. THE COURT'S ORDER IN THIS CASE DIRECTLY CONFLICTS WITH OTHER TAX COURT ORDERS AND NOTICES GOVERNING CASES WITH NEARLY IDENTICAL FACTS.

94. Neither small tax cases nor Tax Court orders are to be treated as precedent. I.R.C. § 7463(b); T.C. Rule 50(f). However, they are illustrative with respect to how the Court has handled identical and similar cases in the past.

95. In this case, the Court's Order is in direct conflict with its past procedure and orders on jurisdictional matters in substantially similar cases.

A. Fitzpatrick Involved the Very Same Snow Day, February 17, 2015, but the Court Dismissed the Case for Lack of Jurisdiction.

96. The facts of Fitzpatrick v. Commissioner, Docket No. 4416-15S, are nearly identical to this case. The facts are set forth in the Court's order dated April 28, 2015.

97. In Fitzpatrick, the IRS mailed the taxpayer a notice of deficiency on November 17, 2014. The last date by which the taxpayer could file a timely petition with the Court was February 17, 2015. The petition was hand delivered to the Court on February 18, 2015, one day after the 90-day period set forth in I.R.C. § 6213(a). The IRS filed a motion to dismiss for lack of jurisdiction, to which the taxpayer filed an objection. In her objection, the taxpayer argued that "on February 17, 2015, the Tax Court was officially closed due to emergency snow clearing caused by a major snow storm."

98. The Court rejected the taxpayer's argument and dismissed the case for lack of jurisdiction, noting that the Tax Court is a court of limited jurisdiction, that the petition was filed outside of the 90-day period, and that the taxpayer was not entitled to relief under I.R.C. § 7508A because there was no Presidential disaster declaration for the snowstorm on February 17, 2015. There was no mention whatsoever that the snow day should be construed as a "legal holiday" under Section 7503, nor

did the Court invoke the inaccessibility of the clerk provision of Fed. R. Civ. P. 6(a).

99. The Court's Order in this case is in direct conflict with the order in Fitzpatrick. In both cases, the petitions arrived at the Court on February 18, 2015 (Fitzpatrick's due to hand delivery; Petitioner's due to the use of an undesignated private delivery service), one day after the expiration of each respective statutory time period for filing a Tax Court petition. The Court should be consistent in its treatment of one-day-late petitions that were filed on February 18, 2015. There is simply no basis for dismissing Fitzpatrick's case for lack of jurisdiction, yet allowing Petitioner's case to proceed on the grounds that February 17, 2015, was a "holiday" or pursuant to a nonexistent inaccessibility provision.

B. Inclement Weather Did Not Extend the Filing Date in Colabella.

100. The facts of Colabella v. Commissioner, Docket No. 1034-14S, are very similar to this case and Fitzpatrick. They are set forth in the Court's order of dismissal for lack of jurisdiction dated April 15, 2014.

101. The IRS mailed a notice of deficiency to the taxpayers on October 21, 2013. The 90th day was Sunday, January 19, 2014, and Monday, January 20, 2014, was Martin Luther King Day, Jr.'s

Birthday, a legal holiday in the District of Columbia. As a result, the last day to file the petition was January 21, 2014. However, the taxpayers were unable to file their petition on January 21, 2014, because the Tax Court was closed due to inclement weather conditions. Thus, the taxpayers hand delivered their petition on January 22, 2014.

102. The Court dismissed the taxpayers' case for lack of jurisdiction:

Controlling statutes do not permit such leniency in extending deadlines. The 90-day deadline for filing a petition is set by statute. It is not set by the Court and thus may not be altered by the Court. Only Congress has the power to amend the statute and thereby to change or extend the time for filing a petition. Congress has taken no such action to address the consequences of routine closures for inclement weather. If the Court is closed for such reasons, and hand delivery to the courthouse is unavailable, taxpayers must comply with the statutory deadlines by timely mailing a petition to the Court. Timeliness of mailing of the petition is then determined by the U.S. Postal Service's postmark or the delivery certificate of an approved private express delivery company, and again the statutes make no provisions for weather complications (barring disaster declarations).

Thus, while the Court is sympathetic to petitioners' situation and understands the unanticipated character of the delays here, the fundamental nature of the filing deadline precludes the case from going forward. As a Court of limited jurisdiction, the Court is unable to offer any remedy or assistance when a petition is not timely filed. The Court has no authority to extend that period provided by law for filing a petition "whatever the equities of a particular case may be and regardless of the cause for its not being filed within the required period." Axe

v. Commissioner, 58 T.C. 256, 259 (1972). Accordingly, since petitioners have failed to establish that the petition was properly filed with or mailed to this Court within the required period, this case must be dismissed for lack of jurisdiction.

103. Considering the similarity between Colabella and the present case, the result should be the same. Dismissal of the taxpayer's case in Colabella for lack of jurisdiction while allowing Petitioner's case to go forward on the grounds that the snow day was a "holiday" or that the Court was inaccessible leads to inconsistent results.

C. The Court Did Not Treat the Government Shutdown of October, 2013 as a 16-Day Holiday or Inaccessibility Period.

104. On October 17, 2013, the Tax Court issued a notice regarding the federal government shutdown that lasted from October 1, 2013, through October 16, 2013. See U.S. Tax Court, Resumption of Tax Court Operations After Government Shutdown, (Oct. 17, 2013), https://www.ustaxcourt.gov/Startup_Announcement_Final_101713.pdf. During the shutdown, the Court was not open for business. Id. at 1. The Court noted that "[b]ecause of the government shutdown, parties were unable to submit documents (either electronically or in paper form) to the Court" during the 16-day shutdown period. Id. As a result, the Court established revised due dates for the filing of pretrial

memoranda, briefs, pleadings, decision documents, and other items. Id. at 2.

105. However, under the heading "Statutory Filing Deadlines," the Court stated the following:

The Court lacks authority to extend statutory filing deadlines imposed in the Internal Revenue Code (I.R.C.). For example, I.R.C. section 6213(a) provides that a taxpayer must file a petition with the Court to redetermine a deficiency within 90 days after the mailing of a notice of deficiency, and I.R.C. section 6330(d)(1) provides that a taxpayer must file a petition to review a determination involving a proposed lien or levy within 30 days after the mailing of the notice of determination. Hand-delivery to the Courthouse was not available during the period the Court was closed due to the Federal government shutdown. During that period, taxpayers were required to comply with the statutory deadlines by timely mailing petitions to the Court. Timeliness of mailing of the petition is determined by the United States Postal Service's postmark or the delivery certificate of an approved private express delivery company.

Id. at 3.⁵

106. In an order dated February 3, 2014, the Court granted the IRS's motion to dismiss for lack of jurisdiction in McCoy v.

⁵ The Court recently posted a similar notice on its website regarding its closure due to the visit of Pope Francis to Washington, D.C., on September 24, 2015. The notice reads:

Taxpayers may comply with statutory deadlines for filing petitions or notices of appeal (both of which types of documents must be filed in paper) by timely mailing a petition or notice of appeal to the Court. Timeliness of mailing of the petition or notice of appeal is determined by the United States Postal Service's postmark or the delivery certificate of a designated private delivery service.

Commissioner, Docket No. 2591-13S. After receiving a notice of deficiency, the last day for the taxpayer to file her petition was October 15, 2015. In her opposition to the Commissioner's motion, the taxpayer stated that her lawyer had tried to hand deliver the petition to the Court on October 11, 2013, but the Court was closed due to the shutdown. After the shutdown ended, the lawyer hand delivered the petition to the Court, but by that time it was 20 days too late. In its dismissal of McCoy's case, the Court referenced its warning on October 1, 2013, regarding the shutdown and statutory filing deadlines.

107. There is little difference between closure due to a snow emergency and closure due to a government shutdown. In both scenarios, the Court is not open for business and taxpayers are unable to submit petitions to the Court.

108. In the shutdown notice, the Court referred to the mailbox rule of I.R.C. § 7502 for purposes of complying with statutory filing deadlines. There is no indication that the shutdown would be construed as a 16-day "legal holiday" that extended the period for filing petitions. Similarly, there was no mention whatsoever of the inaccessibility of the clerk provision under the Federal Rules of Civil Procedure.

109. The Court's Order in this case is wholly inconsistent with its position regarding the filing of petitions during the 2013 federal government shutdown and the outcome of McCoy.

IV. CONCLUSION

110. For the reasons set forth above, the Court should hold that the petition was not filed timely and that this case should be dismissed for lack of jurisdiction.

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