



United States Tax Court

Washington, DC 20217

PAOLA FRUTIGER, ET AL.,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket Nos. 25835-21
31153-21.

ORDER

These cases, which involve separate claims for innocent spouse relief filed by Paola Frutiger and Paul Frutiger, are calendared for trial at the session of the Court commencing in San Diego, California on September 19, 2022. Because these two cases involve spouses who filed a joint return with each other, the Court consolidated them. For the reasons stated below, we will strike these cases from the trial session.

By separate letters dated June 16, 2021, the Commissioner denied separate claims for innocent spouse relief for 2018 made by Paola Frutiger and Paul Frutiger. Paola Frutiger filed a timely petition, at Docket No. 25835-21. A question has arisen as to whether Paul Frutiger filed a timely petition, at Docket No. 31153-21, and if not, what would be the consequence of filing an untimely petition.

Under section 6015(e)(1), if the Commissioner denies innocent spouse relief, the taxpayer who sought relief may file a petition with the Tax Court to challenge the Commissioner's final determination. The petition must be filed within 90 days of the date the Commissioner mails the final determination letter to the taxpayer. I.R.C. § 6015(e)(1)(A). The Court has previously held that this deadline is jurisdictional. *Pollock v. Commissioner*, 132 T.C. 21 (2009) *but see Boechler v. Commissioner*, 142 S. Ct. 1493 (2022).

If the Commissioner mailed his final determination to Mr. Frutiger on June 16, 2021, the 90-day period for timely filing a petition with this Court ended September 14, 2021. Mr. Frutiger's petition was mailed to the Court on September 16, 2021, and received by the Court on September 20, 2021.

Without additional information, it appears that Mr. Frutiger's petition was untimely. For the Court to determine whether the petition was untimely, the

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Commissioner must provide proof of when he mailed the notice of determination to Mr. Frutiger. If proof of mailing is not available, the Commissioner must address whether the presumption of administrative regularity would apply in determining when the notice of determination was sent. Lastly, if the petition was untimely, the Commissioner must address whether the Court lacks jurisdiction over an untimely petition in an innocent spouse case filed under section 6015(e)(1)(A). Accordingly, it is

ORDERED that this case is stricken from the Court's September 19, 2022, San Diego trial session, and the parties are excused from appearing at the calendar call. It is further

ORDERED that jurisdiction is retained by the undersigned. It is further

ORDERED that the Commissioner shall file a response to this Order by October 21, 2022, addressing the issues set forth above and attaching proof of mailing of the notice of the final determination to Mr. Frutiger. It is further

ORDERED that Mr. Frutiger shall file a response to this Order by November 18, 2022. It is further

ORDERED that any motion for leave to file an amicus brief in support of either party must be filed by November 18, 2022. The proposed amicus brief must be lodged at the time the motion is filed. It is further

ORDERED that the Commissioner may file a further response to this order by December 9, 2022. It is further

ORDERED that all papers filed in response to this Order shall be filed only in Docket no. 31153-21.

(Signed) Ronald L. Buch
Judge