# United States Tax Court

T.C. Memo. 2026-82

DANIA WALES,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

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Docket No. 16089-25. Filed September 3, 2026.

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*Chris J. Sheldon*, *Brian D. Plaut*, and *Jason M. Silver*, for petitioner.

*Fred Edward Green* and *Wesley J. Wong*, for respondent.

## MEMORANDUM OPINION

WEILER, *Judge*: This case is before the Court on respondent's Motion to Dismiss for Lack of Jurisdiction (Motion to Dismiss), on the grounds that the Petition was not filed within the time prescribed under section 6015.[1]

### *Background*

We conducted a hearing on the Motion to Dismiss during the Court's June 15, 2026, Las Vegas, Nevada, trial session. We derive the following facts from that hearing, the pleadings, and the parties' Motion papers, including attached Declarations. Unless otherwise stated, the facts are not disputed. These facts are stated solely for the purpose of deciding respondent's Motion to Dismiss and not as findings of fact in

[1] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (I.R.C. or Code), in effect at all relevant times.

**[*2]** this case. *See Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992), *aff'd*, 17 F.3d 965 (7th Cir. 1994).

Petitioner filed her Petition on December 5, 2025, requesting section 6015 relief in connection with her Form 8857, Request for Innocent Spouse Relief, which she mailed to the Internal Revenue Service (IRS) on August 29, 2023. Petitioner asserts in her Petition that respondent has not issued her a Final Determination Notice.

On January 27, 2026, respondent filed his Motion to Dismiss contending that a Final Determination Notice was sent to petitioner's last known address by certified mail. Respondent's Motion to Dismiss attached the Final Determination Notice, the envelope the Final Determination Notice was sent in, a voucher that accompanied the Final Determination Notice, and the U.S. Postal Service (USPS) Tracking History.

The Final Determination Notice displayed a tracking number (9307110756601262973920) in the left-hand corner and stated "certified mail" on the first page. However, the exterior of the envelope of the Final Determination Notice indicates it was sent by presorted first-class mail and was stamped "unclaimed" along with a stamped date of "April 11."[2] The envelope bears no stamp or sticker indicating it was sent by certified mail.

Respondent also provided a voucher that accompanied the Final Determination Notice which was stamped "Internal Revenue Service RECEIVED March 18" with an illegible year and "Campus Support Florence, KY Mail Unit #204."

Respondent's downloaded USPS Tracking History tracking number matched the tracking number listed on the Final Determination Notice. The USPS Tracking History showed that on February 4, 2025, a notice was left at the location since no authorized recipient was available. Subsequent entries in the USPS Tracking History indicate that on February 9, 2025, there was a reminder to schedule redelivery of an item, but on March 6, 2025, the mail arrived back at the USPS Regional Facility before being returned to the IRS where it was picked up at the postal facility in Covington, Kentucky, on March 17, 2025.

[2] Respondent contends that the USPS stamped "unclaimed" and that the stamped date "April 11" was made by the Innocent Spouse Operation Unit at the Cincinnati Service Center.

**[*3]** By Order served on January 28, 2026, we ordered petitioner to file a response to respondent's Motion to Dismiss by February 19, 2026. On January 29, 2026, petitioner filed an Objection to Motion to Dismiss for Lack of Jurisdiction. By Order served on January 30, 2026, we ordered respondent to file a response to petitioner's Objection to Motion to Dismiss for Lack of Jurisdiction by February 23, 2026. On February 23, 2026, respondent filed a Motion for Extension of Time which we granted on February 24, 2026, extending respondent's time to respond until March 24, 2026.

On March 24, 2026, respondent filed a Response to Objection to Motion to Dismiss which included the same Exhibits as his first Motion to Dismiss along with a USPS Tracking Plus Statement regarding the USPS Tracking History with a certification from a USPS paralegal specialist. The USPS paralegal's certification does not confirm that the Final Determination Notice was sent via certified mail. Respondent did not provide a copy of the USPS Form 3877, Firm Mailing Book For Accountable Mail.

*Discussion*

I. *Tax Court Jurisdiction*

The Tax Court is a court of limited jurisdiction and can exercise its jurisdiction only to the extent provided by Congress. I.R.C. § 7442; *Judge v. Commissioner*, 88 T.C. 1175, 1180–81 (1987). Section 6015(e)(1)(A) confers jurisdiction on this Court to review a petition for innocent spouse relief. It provides:

> Sec. 6015(e). Petition for review by Tax Court.
>
> (1) In general.—In the case of an individual against whom a deficiency has been asserted and who elects to have subsection (b) or (c) apply, or in the case of an individual who requests equitable relief under subsection (f)—
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> (A) In general.—In addition to any other remedy provided by law, the individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section if such petition is filed—
>
> (i) at any time after the earlier of—

[*4] (I) the date the Secretary mails, by certified or registered mail to the taxpayer's last known address, notice of the Secretary's final determination of relief available to the individual, or

(II) the date which is 6 months after the date such election is filed or request is made with the Secretary, and

(ii) not later than the close of the 90th day after the date described in clause (i)(I).

I.R.C. § 6015(e)(1)(A). We have jurisdiction over an innocent spouse relief claim if the taxpayer files a timely petition. I.R.C. § 6015(e)(1)(A). As in deficiency proceedings, *see* I.R.C. § 6213(a), our jurisdiction here is also predicated upon the filing of a timely petition, which may be brought in this Court at any time after the earlier of the date on which the determination is mailed or the date that is six months after the date on which the election was filed, but not later than 90 days after the date of the determination, I.R.C. § 6015(e)(1)(A); *see, e.g.*, *James v. Commissioner*, T.C. Memo. 2021-7, at *7 n.3 ("When the IRS issues no notice of determination, a taxpayer may file a petition in this Court at any time after 'the date which is 6 months after the date such election is filed or request is made with the Secretary.' Sec. 6015(e)(1)(A)(i)(II).").

## II. *Summary of the Parties' Arguments*

Respondent argues that petitioner did not timely file her Petition within the 90-day filing period of section 6015(e)(1)(A)(i)(I) and (ii). Respondent admits that the certified mail list is not available but claims that the act of mailing a notice can be proven by documentary evidence or evidence of IRS mailing practices corroborated by direct testimony. The documentary evidence respondent refers to includes the dated Final Determination Notice, which bears a certified mail tracking number that matches the tracking number on the USPS Tracking Plus Statement. In addition, respondent claims the fact that the notice was returned to the IRS is additional evidence that the Final Determination Notice was properly mailed to petitioner.

Petitioner contends that she did not receive the Final Determination Notice, and therefore she timely filed her Petition six months after filing the election for section 6015 relief. Petitioner cites section 6015(e)(1)(A) to support her argument that the Code requires

**[*5]** only that a petition be filed "at any time after the earlier of" a final determination mailed by certified or registered mail, or the date which is six months after the date the election is filed. Thus, since respondent has not proven that the Final Determination Notice was mailed via certified or registered mail, the earlier of the dates in the two subclauses would be the date six months after the date the election was filed. We agree with petitioner's reading of the Code.

Since our jurisdiction under section 6015(e)(1)(A) is predicated on the filing of a petition at any time after the earlier of subclause (I) or (II), we must determine whether respondent has established that the Final Determination Notice was mailed by certified or registered mail to petitioner's last known address. *See* I.R.C. § 6015(e)(1)(A)(i) and (ii).

III. *Mailing of the Final Determination*

Respondent bears the burden of proving proper mailing of the Final Determination Notice by competent and persuasive evidence. *See Coleman v. Commissioner*, 94 T.C. 82, 90 (1990). That burden requires respondent to introduce evidence showing that the Final Determination Notice was properly delivered to the USPS for mailing. *See Cataldo v. Commissioner*, 60 T.C. 522, 524 (1973), *aff'd per curiam*, 499 F.2d 550 (2d Cir. 1974).

To prove proper mailing as to the Final Determination Notice, we will look to our prior caselaw regarding proof of mailing in the context of a Notice of Deficiency. Regarding a Notice of Deficiency, this Court has stated: "A Form 3877 reflecting Postal Service receipt represents direct documentary evidence of the date and the fact of mailing." *Coleman*, 94 T.C. at 90. Our Court has established that if the existence of the Notice of Deficiency is undisputed, a properly completed Form 3877 is sufficient to establish proper mailing; but even a Form 3877 with defects is probative and may be combined with additional evidence to meet the Commissioner's burden. *See O'Rourke v. United States*, 587 F.3d 537, 540–42 (2d Cir. 2009) (per curiam); *Coleman*, 94 T.C. at 91–92; *Portwine v. Commissioner*, T.C. Memo. 2015-29, at *11–12, *aff'd*, 668 F. App'x 838 (10th Cir. 2016). The act of mailing may be proven by evidence of the Commissioner's mailing practices corroborated by direct testimony or documentary evidence of mailing. *Coleman*, 94 T.C. at 90; *see Magazine v. Commissioner*, 89 T.C. 321, 326 (1987). If he does not produce a complete Form 3877, the Commissioner may nonetheless establish proper mailing by presenting "otherwise sufficient" evidence. *See Coleman*, 94 T.C. at 91; *see also Rivas v. Commissioner*, T.C. Memo.

**[*6]** 2017-56, at *13 (stating that the presumption of proper mailing does not arise without presenting a "properly completed" Form 3877).

Respondent has not produced Form 3877; thus, to prove proper mailing under the Code respondent offers the USPS Tracking History for the tracking number printed at the top of the Final Determination Notice. Respondent contends that by comparing this tracking number with the USPS Tracking History, we are able to confirm that the Final Determination Notice was in fact sent by certified mail to petitioner. We disagree.

Although the Final Determination Notice provides a tracking number and states "certified mail," the envelope itself bears no marking that expressly identifies the item being sent by certified or registered mail. The envelope indicated only that the Final Determination Notice was sent via presorted first-class mail. Thus, it remains entirely unclear whether the Final Determination Notice was actually sent via certified (or registered) mail.

We acknowledge that respondent has furnished a USPS Tracking Plus Statement that includes the tracking history for the Final Determination Notice's specific tracking number, as well as a separate certification by a USPS paralegal regarding the accuracy of the Tracking Plus Statement. The USPS Tracking Plus Statement, however, fails to indicate whether the contents of the letter were sent by certified or registered mail.[3] Further, the tracking number itself does not indicate that it was sent via certified or registered mail. Finally, the certification respondent offers from the USPS paralegal fails to state whether the Final Determination Notice was sent by certified or registered mail.

This type of documentary evidence falls short of what we have accepted in the past to show proper mailing in situations where the Commissioner does not present a Form 3877. *See Garrett v. Commissioner*, T.C. Memo. 2016-179, at *13–14 (concluding that the Commissioner established proper mailing by presenting a certified mailing list which referenced the Notice of Deficiency and the date of its

[3] Respondent clarified that the USPS Tracking History reports that it was picked up at the postal facility on March 17, 2025. This date connects with the stamped date on the voucher, which states: "Internal Revenue Service RECEIVED March 18" with an illegible year and "Campus Support Florence, KY Mail Unit #204." The Final Determination Notice envelope is stamped "unclaimed" with a date of "April 11" since it appears it was forwarded to the Innocent Spouse Operation Unit at the Cincinnati Service Center.

**[*7]** mailing and was also stamped and initialed by the postmaster); *see also Crain v. Commissioner*, T.C. Memo. 2012-97, 103 T.C.M. (CCH) 1533, 1535–36 (determining that proper mailing was established through a computerized certified mailing list which provided equivalent information to Form 3877). On the basis of the evidence before us, we find that the record fails to establish that respondent properly mailed the Final Determination Notice by certified or registered mail. *See* I.R.C. § 6015(e)(1)(A)(i)(I).

Since respondent has failed to establish proper mailing of the Final Determination Notice by certified or registered mail and petitioner filed her Petition more than six months after she filed her innocent spouse election, we hold that this Court has jurisdiction over this case. *See* I.R.C. § 6015(e)(1)(A)(i).

Premises considered, we will deny respondent's Motion to Dismiss.

To reflect the foregoing,

*An appropriate order will be issued.*