

SUPREME COURT OF THE UNITED STATES

NO. 23-3108

ANASTASIOS M. SMALIS,

Petitioner,

V

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF
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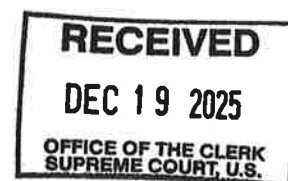
(Supreme Court Rule 30.2)

To the Honorable Circuit Justice for the Third Circuit: The Honorable Associate Justice
Samuel A. Alito, Jr. of the Supreme Court of the United States.

Petitioner Anastasios M. Smalis, appearing pro se, respectfully applies for a ninety (90)
day extension of time to file a Petition for a Writ of Certiorari to review the judgment of
the United States Court of Appeals for the Third Circuit.

I. JUDGMENT SOUGHT TO BE REVIEWED

The judgment sought to be reviewed is the October 3, 2025 Order of the United States



Court of Appeals for the Third Circuit denying panel rehearing and rehearing en banc in Case No. 23-3108, Smalis v. Commissioner of Internal Revenue. Order of En Banc attached Exhibit "A".

II. JURISDICTION AND TIME LIMIT

Jurisdiction is invoked under 28 U.S.C. § 1254(1). The Petition for a Writ of Certiorari is currently due January 3, 2026.

III. REASONS FOR EXTENSION

Petitioner has undergone and continues to undergo serious medical treatment and surgeries which substantially impair his ability to prepare a Petition for Certiorari. Post-surgical recovery, pain, and medication side effects significantly limit sustained legal research and drafting. Attached medical Exhibit "B" medical, reinjury's, dates of surgery & documentation of neurosurgeon Dr. David Hamilton MD of UPMC Neurological Institute -Presbyterian.

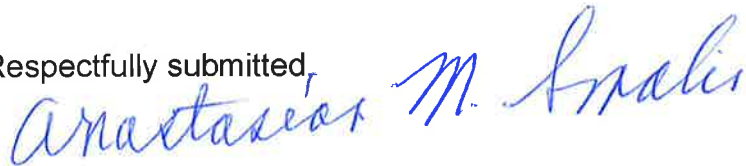
Petitioner is proceeding pro se in a complex constitutional case involving due process violations and federal jurisdictional issues. Additional time is necessary to ensure proper presentation.

This is Petitioner's first request for an extension and no prejudice will result to Respondent.

IV. LENGTH OF EXTENSION REQUESTED

Petitioner respectfully requests a ninety (90) day extension, making the Petition for a Writ of Certiorari due April 3, 2026.

Respectfully submitted,



Anastasios M. Smalis

Petitioner, Pro Se

6652 Northumberland Street

Pittsburgh PA 15217

412 303 5564

Smalisanastasios18@gmail.com

Date: December 17, 2025

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-3108

ANASTASIOS M. SMALIS,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court
(U.S. Tax Court No. 21-5882)
Tax Court Judge: Honorable Travis A. Greaves

Submitted Pursuant to Third Circuit LAR 34.1(a)
November 21, 2024

Before: RESTREPO, MATEY, and CHUNG, Circuit Judges

(Opinion filed: December 18, 2024)

OPINION*

PER CURIAM

Anastasios Smalis appeals pro se from the Tax Court's dismissal of his petition for lack of jurisdiction and the denial of his motion to vacate or revise the decision. We will affirm.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

I.

In 2021, Smalis filed a petition in the Tax Court to challenge Internal Revenue Service (“IRS”) actions allegedly taken for his 1992 tax deficiencies. He challenged a notice of deficiency, a notice of determination concerning a collection action, a notice of final determination for disallowance of interest abatement, and a notice of determination concerning relief from joint and several liability. He claimed that the IRS improperly mailed notices to a prior address even though he submitted a change of address form in 1995, that he was deprived of adequate notice in violation of due process, and that the IRS abused its discretion by refileing a lien.

Smalis did not attach any of the alleged notices to his petition. Instead, he attached a balance reminder from the IRS. He also provided a Collection Appeal Request form he completed in 2016. And he submitted records showing that in May 2017, the IRS issued notice of a federal tax lien for the tax period ending in 1992, assessed in 1994. Additionally, he attached his 2020 Social Security Benefit statement showing a garnishment or levy on his benefits.

The Commissioner of Internal Revenue moved to dismiss for lack of jurisdiction. The Commissioner stated that the IRS had not sent Smalis any of the alleged notices he purported to challenge in his petition, and that Smalis had not produced any notice or determination sufficient to confer the Tax Court with jurisdiction. In response, Smalis argued that the IRS violated due process by seizing his assets without providing him adequate notice and an opportunity to dispute his liability.

The Tax Court concluded it lacked jurisdiction to review the petition and dismissed the case. Smalis moved for reconsideration, which the Tax Court construed as a motion to vacate or revise the decision under Tax Court Rule 162. Smalis asserted he was “never served with a copy of deficiency or a determination relating to his case,” and he was entitled to a hearing to dispute the IRS’s collection. The Tax Court denied the motion, and Smalis appealed.

II.

We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review the Tax Court’s dismissal for lack of jurisdiction de novo, and we review its factual findings for clear error. Culp v. Comm’r, 75 F.4th 196, 200 (3d Cir. 2023). We review the Tax Court’s denial of a motion to vacate for abuse of discretion. Drobny v. Comm’r, 113 F.3d 670, 676 (7th Cir. 1997).

The party asserting Tax Court jurisdiction has the burden to establish it. See Shands v. Comm’r, 111 F.4th 1, 7 (D.C. Cir. 2024). The Tax Court’s jurisdiction is limited to what is expressly authorized by Congress. See 26 U.S.C. § 7442; Sunoco Inc. v. Comm’r, 663 F.3d 181, 187 (3d Cir. 2011). For example, Congress has authorized the Tax Court to review deficiency determinations. See generally 26 U.S.C. § 6213.¹ But the Tax Court acquires jurisdiction to review a deficiency determination only after the IRS issues a notice of deficiency. Dudley v. Comm’r, 258 F.2d 182, 183 (3d Cir. 1958);

¹ A tax “deficiency” occurs when the tax amount imposed by the IRS exceeds the tax amount reported by the taxpayer on his return. See Lazore v. Comm’r, 11 F.3d 1180, 1188 (3d Cir. 1993); 26 U.S.C. § 6211.

see also Delman v. Comm’r, 384 F.2d 929, 934 (3d Cir. 1967) (stating that the notice of deficiency is the taxpayer’s “ticket” to Tax Court); Est. of Davenport v. Comm’r, 184 F.3d 1176, 1182 n.2 (10th Cir. 1999) (“A valid deficiency notice is a prerequisite to Tax Court jurisdiction.”); Tax Court Rule 13(a). Similarly, the Tax Court may review the IRS’s collection activities, see 26 U.S.C. § 6330(d), but only after the IRS issues a notice of determination, see Adolphson v. Comm’r, 842 F.3d 478, 480 (7th Cir. 2016).

Additionally, the Tax Court lacks jurisdiction to review a decision not to abate interest until the IRS has issued a determination not to abate interest. See 26 U.S.C. § 6404(h); Williams v. Comm’r, 131 T.C. 54, 55 (2008); cf. Wright v. Comm’r, 571 F.3d 215, 219-20 (2d Cir. 2009) (holding that the Tax Court had jurisdiction to determine whether the taxpayer was entitled to an abatement of interest because the IRS had issued a notice of determination that did not grant abatement). And the Tax Court may review a determination not to grant relief from joint and several liability under 26 U.S.C. § 6015 only “if an individual files a petition in the court no later than ninety days after the IRS mails its notice of final determination.” Rubel v. Comm’r, 856 F.3d 301, 305 (3d Cir. 2017).

The parties do not contest that Smalis did not receive the alleged notices, and the IRS determined that it never sent the challenged notices, nor any document that could qualify as one. Without providing such a notice, Smalis did not meet his burden to establish that the Tax Court had jurisdiction over his petition. See Shands, 111 F.4th at 7. Smalis asserts that because he never received a notice, he had no opportunity for a collection due process hearing, and thus he was deprived of due process. Even if we

assume Smalis is correct, without a notice of deficiency or determination, the Tax Court had no jurisdiction over his petition. This remains true even in circumstances where the Commissioner is at fault for failing to carry out the statutory duty to issue notice. See Adolphson, 842 F.3d at 486; see also Musso v. Comm’r, 531 F.2d 772, 774 (5th Cir. 1976) (explaining that the Tax Court has no equity powers).

Thus, the Tax Court did not err by dismissing Smalis’s petition for lack of jurisdiction. And because Smalis re-argued the same points in his post-decision motion, the court did not abuse its discretion by denying his motion to vacate or revise the decision. Accordingly, we will affirm the Tax Court’s judgment.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 23-3108

ANASTASIOS M. SMALIS,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

U.S. Tax Court No. 21-5882

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, and CHUNG, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: October 3, 2025

Tmm/cc: Anastasios M. Smalis, I
Marie Wicks, Esq.
Ellen Page DelSole, Esq.

SUPREME COURT OF THE UNITED STATES

NO. 23-3108

ANASTASIOS M. SMALIS,

Petitioner,

V

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PROPOSED ORDER

Upon consideration of the Application for Extension of Time to File a Petition for a Writ of Certiorari, it is ORDERED that the Application is GRANTED and the time for filing is extended to April 3, 2026.

Circuit Justice for the Third Circuit

Date: _____

SUPREME COURT OF THE UNITED STATES

NO. 23-3108

ANASTASIOS M. SMALIS,

Petitioner,

V

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CERTIFICATE OF SERVICE

I, Anastasios Smalis pro se, certify that on this 12 day of December 2025, I caused a true and correct copy of the foregoing Application for an Extension of Time to File a Petition for a Writ of Certiorari to be served by electronic & first-class U.S. Mail / Federal Express upon the following counsel of record:

Marie E. Wicks Respondent Attorney
US Department of Justice, Tax Division
P O Box 502, Benjamin Franklin Station
Washington DC 20044

I declare under penalty of perjury that the foregoing is true and correct.

Date: December 17, 2025

Anastasios M Smalis pro se

A handwritten signature in blue ink that reads "Anastasios M. Smalis". The signature is written in a cursive style with a distinct flourish at the end.

6652 Northumberland Street

Pittsburgh PA 15217

412 303 5564

Smalisanastasios18@gmail.com

DECLARATION OF ANASTASIOS M. SMALIS

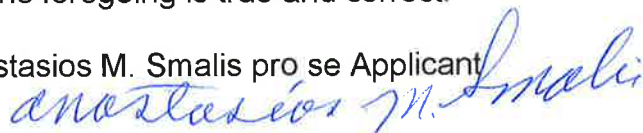
IN SUPPORT OF APPLICATION FOR EXTENSION OF TIME

I, Anastasios M. Smalis pro se declare as follows:

1. I am the Petitioner/Appellant, proceeding pro se, in the above-captioned matter.
2. I respectfully request an extension of time to file a Petition for a Writ of Certiorari due to serious and ongoing medical conditions that have substantially impaired my ability to prepare a compliant petition.
3. During the relevant period, I have undergone medical treatment and surgical procedures, and I continue to experience pain, physical limitation, and medication side effects, including but not limited to fatigue, drowsiness, and reduced concentration.
4. These medical conditions have materially interfered with my ability to research, draft, and assemble a petition that meets the requirements of the Rules of this Court.
5. This application is made in good faith and not for purposes of delay. I intend to diligently prepare and file the petition if the requested extension is granted.
6. I have not previously requested an extension of time in this matter.
7. Granting this extension will not prejudice Respondents, while denial would cause substantial and irreparable harm to my ability to seek review of serious constitutional issues.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 17, 2025 Anastasios M. Smalis pro se Applicant



**Additional material
from this filing is
available in the
Clerk's Office.**