

December 1, 2009

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

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DAVID E. LANDESS,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent - Appellee.

No. 09-9001

(United States Tax Court)

(Tax Court No. 5393-07)

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**ORDER AND JUDGMENT\***

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Before **HARTZ, SEYMOUR,** and **ANDERSON,** Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

David Landess, proceeding *pro se*, appeals the Tax Court's order granting the Commissioner of the Internal Revenue Service's motion to dismiss for lack of

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\*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

jurisdiction and denying as moot his motion to restrain assessment or order refund of amount collected. We affirm.

The Tax Court properly concluded that it lacked jurisdiction because Mr. Landess was never issued a Notice of Deficiency or a Notice of Determination. See 26 U.S.C. §§ 6213, 6330; Abrams v. Comm’r, 814 F.2d 1356, 1357 (9th Cir. 1987) (per curiam) (holding that a pre-filing notification letter from the Internal Revenue Service was not a Notice of Deficiency and therefore, the Tax Court had no jurisdiction over the taxpayer’s petition); see also Tuka v. Comm’r, No. 09-1598, 2009 WL 3236066, at \*1-2 (3rd Cir. 2009) (unpublished) (“[T]he lock-in letter . . . does not constitute a notice of determination.”); Davis v. Comm’r, T.C. Memo. 2008-238, 2008 WL 4703706, at \*7 (2008) (“[A] lock-in letter is not a levy.”).

We have examined all of Mr. Landess’s arguments and find them unpersuasive.

AFFIRMED.

ENTERED FOR THE COURT

Stephen H. Anderson  
Circuit Judge