

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 09-1671

Janice E. McDonald;
William H. McDonald,

Appellants,

v.

Commissioner of Internal
Revenue,

Appellee.

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Appeal from the United
States Tax Court.

[UNPUBLISHED]

Submitted: November 18, 2009
Filed: January 19, 2010

Before MELLOY, BEAM, and GRUENDER, Circuit Judges.

PER CURIAM.

On April 6, 2006, the Commissioner of Internal Revenue, pursuant to 26 U.S.C. § 6212, issued a notice of deficiency to the McDonalds for the taxable year 2002. In response, on July 12, 2006, the McDonalds mailed a petition to the Tax Court challenging the deficiency notice pursuant to 26 U.S.C. § 6213. Section 6213 states that within ninety days after the notice of deficiency is mailed, the taxpayer may file

a petition with the Tax Court for a redetermination of the deficiency.¹ 26 U.S.C. § 6213(a). Both parties filed motions to dismiss, and the Tax Court² granted the Commissioner's motion. The Tax Court reasoned that because the McDonalds filed their action more than ninety days after the Commissioner issued the notice of deficiency, it did not have jurisdiction over the action.

The Tax Court's limited jurisdiction depends upon express statutory authority. Comm'r v. McCoy, 484 U.S. 3, 7 (1987). Because the McDonalds did not meet the jurisdictional timely filing requirement in 26 U.S.C. § 6213(a), the Tax Court did not have jurisdiction and correctly dismissed the case. Accordingly, we affirm. See 8th Cir. R. 47B.

¹Although the McDonalds' petition was signed and dated July 3, 2006, it was not postmarked until July 12, 2006, and was not received by the Tax Court until July 17, 2006. The ninety day period expired July 5, 2006.

²The Honorable Harry A. Haines, United States Tax Court Judge.