

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 29 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROBERT B. WISTER,

Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

No. 07-71760

Tax Ct. No. 10506-06

MEMORANDUM *

Appeal from a decision of the
United States Tax Court
Robert A. Wherry, Judge, Presiding

Submitted September 8, 2008**

Before: TASHIMA, SILVERMAN, and CALLAHAN, Circuit Judges.

Robert B. Wister appeals pro se from the tax court's order dismissing for lack of subject matter jurisdiction his petition challenging the penalty assessment

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

imposed for filing a frivolous tax return. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review de novo, *Gorospe v. Comm'r*, 451 F.3d 966, 968 (9th Cir. 2006), and we affirm.

The tax court properly concluded that, at the time Wister filed his petition, it lacked jurisdiction to review the frivolous return penalty. *See* 26 U.S.C. §§ 6702(a), 6703(b) (2006); *see also Ginsberg v. Comm'r*, 130 T.C. 7 (2008) (applying pre-amendment version of § 6330(d)(1) where original notice of determination was issued prior to date amended statute became effective).

AFFIRMED.