

DEC 27 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEONARD MAGNESS,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 09-70621

Tax Ct. No. 5917-07

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Leonard Magness appeals pro se from the tax court's order dismissing his petition for lack of subject matter jurisdiction. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review de novo. *Abrams v. Comm'r*, 814 F.2d 1356, 1357 (9th Cir. 1987) (per curiam). We affirm.

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

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

The tax court properly concluded that it lacked jurisdiction because Magness was never issued a Notice of Deficiency or a Notice of Determination. *See* 26 U.S.C. §§ 6213(a), 6330(d); *Abrams*, 814 F.2d at 1357 (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).

Magness's remaining contentions are unpersuasive.

AFFIRMED.