

SEP 21 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBER ISHAK; GEORGETTE HANNA
SAID,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 11-70230

Tax Ct. No. 11633-10L

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Alber Ishak and Georgette Hanna Said appeal pro se from the Tax Court’s decision upholding the Commissioner of Internal Revenue’s (“CIR”) determination to collect by levy unpaid federal income taxes for 1993, 1994, and 1995, as well as

* 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).

from the Tax Court's decision denying them leave to file an untimely motion to vacate. We have jurisdiction under 26 U.S.C. § 7482(a). We review for an abuse of discretion the Tax Court's denial of leave to file a motion to vacate. *Abatti v. Comm'r*, 859 F.2d 115, 117 (9th Cir. 1988). We affirm.

The Tax Court did not abuse its discretion by denying taxpayers' motion for leave to file an untimely motion to vacate. *See id.* ("We will reverse for abuse of discretion only if we have a definite and firm conviction that the Tax Court committed a clear error of judgment in the conclusion it reached.").

However, because taxpayers did not file a notice of appeal within 90 days of the Tax Court's decision upholding the CIR's determination, we lack jurisdiction to consider their challenges of that decision. *See* 26 U.S.C. § 7483; Fed. R. App. P. 13(a)(1); *see also* Fed. R. App. P. 13(a)(2) (only a "timely motion to vacate" tolls the time to file a notice of appeal).

AFFIRMED.