

JUN 13 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AMA ENTERPRISES, INC,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 11-72954

Tax Ct. No. 23168-10X

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted June 4, 2013**
Pasadena, California

Before: TROTT and W. FLETCHER, Circuit Judges, and STEIN, District
Judge.***

* 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 Honorable Sidney H. Stein, District Judge for the U.S. District Court for the Southern District of New York, sitting by designation.

AMA Enterprises, Inc. (“AMA”) appeals from the Tax Court’s dismissal for lack of jurisdiction. AMA filed a petition in the Tax Court under Internal Revenue Code § 7428, challenging the Internal Revenue Service’s revocation of AMA’s § 501(c)(3) status. The Tax Court held that AMA had not satisfied § 7428(b)(3), which requires that an organization file a § 7428 petition within ninety-one days of the Service mailing an adverse-determination letter. Although AMA did file a petition within the ninety-one day period, its corporate “powers, rights and privileges” were suspended under California law at the time of the filing. The Tax Court therefore determined that AMA did not have the capacity to engage in litigation at the time, as required by Tax Court Rule 60. The court also held that the subsequent revival of AMA’s corporate powers after the ninety-one day period did not retroactively satisfy § 7428(b)(3). *See David Dung Le, M.D., Inc. v. Comm’r*, 114 T.C. 268 (2000), *aff’d*, 22 F. App’x. 837 (9th Cir. 2001) (mem).

We have jurisdiction under 26 U.S.C. § 7482. We affirm the dismissal for the reasons stated by the Tax Court.

AFFIRMED.