FILED
United States Court of Appeals
Tenth Circuit

SEP 18 1989

ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MICHAEL A. LUKES, Petitioner-Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	No. 88-3021 (Tax Court No. 29000-85)

ORDER AND JUDGMENT*

Submitted on the Briefs:

Before **LOGAN**, **MOORE**, and **ANDERSON**, Circuit Judges.

This is an appeal from a decision of the United States Tax court. The Commissioner has moved for dismissal on the jurisdictional ground that Mr. Lukes' notice of appeal was not timely because it was received by the Tax Court one day too late.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

The Commissioner correctly argues that the untimeliness of the notice of appeal deprives us of jurisdiction. Toledano v. Commissioner, 403 F.2d 218 (5th Cir. 1968).[1]

This appeal is **DISMISSED** for want of jurisdiction. Mandate shall issue forthwith.

Entered for the Court

John P. Moore
Circuit Judge

---

[1] Because Mr. Lukes' pro se brief states that the only basis for his appeal is to obtain a mathematical recomputation of his tax liability, we have independently examined the record despite our lack of jurisdiction. Mr. Lukes asserts the Tax Court made a mathematical error because it failed to allow him a personal deduction for real estate taxes and interest paid. Our review discloses Mr. Lukes was allowed a standard deduction of $2,300 instead of the itemized deduction of $2,308 which he claimed. The difference between the standard deduction and the itemized deduction has no effect on Mr. Lukes' tax liability.