

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 05-1670**

---

DAVID J. SHEALY,

Petitioner - Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee.

---

On Appeal from the United States Tax Court. (Tax Ct. Nos. 04-15630; 04-23850)

---

Submitted: November 22, 2005

Decided: December 1, 2005

---

Before MOTZ, TRAXLER, and GREGORY, Circuit Judges.

---

Affirmed in part; dismissed in part by unpublished per curiam opinion.

---

David J. Shealy, Appellant Pro Se. Bruce Raleigh Ellisen, Michael J. Haungs, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

---

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

David J. Shealy noted his appeal from the tax court's orders dismissing his two petitions in which he challenged the Commissioner's deficiency determinations for the tax years 1997 and 1998 and 2001 and 2002. Shealy has filed a motion to dismiss his appeal, asserting that the underlying tax court orders are now null and void. Because Shealy's motion to dismiss his appeal is based on the incorrect conclusion that the tax court's orders are null and void, we deny his motion to dismiss his appeal.

With regard to the tax court's dismissal of Shealy's petition for the 2001 and 2002 tax years, we have reviewed the record and the tax court's opinion and find no reversible error. Accordingly, we affirm this portion of the appeal for the reasons stated by the tax court. See Shealy v. Comm'r, No. 04-15630 (U.S. Tax Ct. Apr. 11, 2005).

We dismiss the appeal from the tax court's dismissal of Shealy's petition for the 1997 and 1998 tax years for lack of jurisdiction because the notice of appeal was not timely filed. The notice of appeal from a decision of the tax court must be filed within ninety days of the entry of the order. 26 U.S.C. § 7483 (2000); Fed. R. App. P. 13(a). This appeal period is jurisdictional. Spencer Med. Assocs. v. Comm'r, 155 F.3d 268, 269 (4th Cir. 1998). The tax court's order was entered on the docket on March 8, 2005. Shealy had until June 6, 2005, to file his

notice of appeal. Shealy's notice of appeal was filed on June 7, 2005.\* Because Shealy failed to file a timely notice of appeal from the dismissal order, we dismiss this portion of the appeal. see Spencer Med. Assocs., 155 F.3d at 269.

Shealy has filed a motion for oral rehearing of his cases by the tax court. We deny this motion. Accordingly, we affirm the tax court's order in No. 04-15630, and dismiss the appeal from the tax court's order in No. 04-23850. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART;  
DISMISSED IN PART

---

\*When a document is mailed to the tax court, it is deemed filed in the tax court on the date on which it was postmarked. 26 U.S.C. § 7502(a); Fed. R. App. P. 13(b).