

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-1677

ROBERT TOLBERT; ELLA M. TOLBERT,

Petitioners - Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee.

Appeal from the United States Tax Court. (Tax Ct. No. 95-3978)

Submitted: November 19, 1998

Decided: December 1, 1998

Before HAMILTON and WILLIAMS, Circuit Judges, and BUTZNER, Senior
Circuit Judge.

Affirmed by unpublished per curiam opinion.

Robert Tolbert, Ella M. Tolbert, Appellants Pro Se. Edward T.
Perelmuter, Loretta C. Argrett, Donald Bruce Tobin, UNITED STATES
DEPARTMENT OF JUSTICE, Washington, D.C.; Stuart L. Brown, INTERNAL
REVENUE SERVICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Robert and Ella M. Tolbert appeal from the tax court's order denying their second motion to vacate the court's decision upholding the Commissioner's determination of deficiencies with respect to their 1989, 1990, and 1991 federal income tax liabilities. Because the tax court had no jurisdiction to vacate its decision based on the grounds asserted in Tolberts' motion, we affirm. See 26 U.S.C. § 748(c) (1994) (tax court's decision becomes final 90 days after entry); Okon v. Commissioner, 26 F.3d 1025, 1026-27 (10th Cir. 1994) (holding that taxpayer's second motion to vacate tax court's decision did not toll 90-day period in which to appeal). Accordingly, we affirm.* 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 light of this disposition, we deny the Tolberts' motion to appoint counsel.