

**Tax Division**

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GSR:RWMetzler
5-24252
CMN 2016100610

October 7, 2016

Via CM/ECF

Gino J. Agnello, Esquire
Clerk, U.S. Court of Appeals
for the Seventh Circuit
2722 Everett McKinley Dirksen
U.S. Courthouse
219 South Dearborn Street
Chicago, IL 60604

Re: Robert H. Tilden v. Commissioner of Internal Revenue
(7th Cir. – No. 15-3838)

Dear Mr. Agnello:

This case was argued on October 6, 2016, before Judges Easterbrook, Wood, and Manion. This letter is filed to correct an inadvertent error in a case name provided at argument, and under FRAP 28(j).

At argument, Mr. Metzler incorrectly indicated that the “*Jack Daniels*” Supreme Court case may have relevance to whether the time limit in I.R.C. § 6213(a) is jurisdictional. He meant to cite *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130 (2008). There, petitioner urged the Supreme Court to overrule its prior holding that the time limit for filing suit in 28 U.S.C. § 2501 is jurisdictional. The Court declined on *stare decisis* grounds, and its reasoning applies with full force here. The Court held that “*stare decisis* in respect to statutory interpretation has ‘special force,’ for ‘Congress remains free to alter what [the Court] ha[s] done.’” *Id.* at 139 (citation omitted). Just as Congress had not changed § 2501 in response to the Court’s treatment of that statute as jurisdictional (*id.*), it also has not altered § 6213(a) to deprive it of jurisdictional force.

The Court in *John R. Sand & Gravel Co.* further reasoned that “re-examin[ing]...well-settled precedent” holding that a limitations period was jurisdictional would “threaten to substitute disruption, confusion, and uncertainty for necessary legal stability.” 552 U.S. at 139. That consideration also applies here, because this Court and other courts of appeal have consistently and continuously treated the time limit in § 6213(a) as jurisdictional. See *Petrulis v. Commissioner*, 938 F.2d 78, 79 (7th Cir. 1991); *Sanders v. Commissioner*, 813 F.2d 859, 861 (7th Cir. 1987); *McPartlin v. Commissioner*, 653 F.2d 1185, 1188 (1981); Answering Br. at 15-16 citing examples of decisions in other circuits.

We also invite the Court’s attention a recent fully reviewed opinion of the Tax Court in *Guralnik v. Commissioner*, 146 T.C. ___, 2016 WL 3165779, at *4-*5 (June 2, 2016), which contains a well-reasoned discussion of whether the jurisdictional status of time limits for Tax Court petitions has been changed by recent Supreme Court cases.

Sincerely yours,

/s/ Robert W. Metzler

ROBERT W. METZLER
Attorney
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I hereby certify that on October 7, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Robert W. Metzler



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s/ _____