

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JAMES L. COFFEY,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 4949-10.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER AND DECISION

This case was previously consolidated with others that had been on the Court’s November 14, 2011 trial calendar for Buffalo, New York. In *Coffey v. Commissioner*, 150 T.C. ___ (Jan. 29, 2018), we held that the statute of limitations barred the deficiencies the Commissioner determined. We therefore dismissed the case for lack of jurisdiction. We quickly realized our mistake, and amended our order to clarify that as a result of our dismissal there was no deficiency for 2003 and 2004, pursuant to I.R.C. § 7459(e).

This was still not quite right in the Commissioner’s view, and he has moved for us to vacate our order dismissing the case and instead enter one granting the Coffeys’ motion for summary judgment. He says that would be the proper way to dispose of the case because “the statute of limitations is an affirmative defense, not a jurisdictional bar to suit resulting in a dismissal.”

The Commissioner is right. Our court gains jurisdiction in a deficiency case when there’s a valid notice of deficiency and a timely petition. I.R.C. §§ 6212(a), 6213(a), 7442; *see also, e.g., GAF Corp. & Subs. v. Commissioner*, 114 T.C. 519, 521 (2000). I.R.C. § 6501(a) says the Commissioner has only three years after a return is filed to *assess* tax, and while a valid notice of deficiency tolls that three-

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year period, *see* I.R.C. § 6503(a), a notice of deficiency isn't automatically *invalid* if the Commissioner sends it after that period ends, *see* I.R.C. § 6212(a); *Genesis Oil & Gas, Ltd. v. Commissioner*, 93 T.C. 562, 564 (1989). A late notice therefore doesn't affect our jurisdiction, but the Commissioner also can't *assess* the tax it shows when a statute-of-limitations defense is properly raised. *See* I.R.C. § 6501(a).

The Coffeys properly raised that defense here, and don't care how the case ends except for decisions that show no deficiency. But to make the paperwork less sloppy, it is

ORDERED that respondent's February 28, 2018 motion to vacate order of dismissal for lack of jurisdiction as amended is granted. It is also

ORDERED that the Court's January 29, 2018 order of dismissal and February 6, 2018 amended order of dismissal are vacated. It is also

ORDERED that petitioners' March 19, 2012 motion for summary judgment is granted. It is also

ORDERED and DECIDED that there is no deficiency in income tax, and no additions to tax, due from petitioner for tax years 2003 and 2004.

**(Signed) Mark V. Holmes
Judge**

Entered: **JUL 24 2018**