

OCT 05 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NATHANIEL CALEB AVERY,</p> <p style="text-align: center;">Petitioner - Appellant,</p> <p>v.</p> <p>COMMISSIONER OF INTERNAL REVENUE,</p> <p style="text-align: center;">Respondent - Appellee.</p>

No. 07-72506

Tax Ct. No. 17315-05

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted September 22, 2010**

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

The tax court properly upheld the tax determination because the Commissioner presented “some substantive evidence” that Nathaniel Caleb Avery (“Avery”) received unreported income, and Avery failed to submit any evidence

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

showing “that the deficiency was arbitrary or erroneous.” *Hardy v. Comm’r*, 181 F.3d 1002, 1004 (9th Cir. 1999).

The tax court also properly upheld the late-filing addition to tax because Avery did not file a tax return for 2002 or provide any evidence suggesting reasonable cause for his failure to do so. *See* 26 U.S.C. § 6651(a)(1).

The tax court acted within its discretion when imposed a \$5,000 penalty, after finding that Avery had instituted the proceedings primarily for delay and had advanced frivolous arguments. *See* 26 U.S.C. § 6673(a) (providing for sanctions up to \$ 25,000 where “proceedings . . . have been instituted or maintained by the taxpayer primarily for delay” or where “the taxpayer’s position in such proceeding is frivolous or groundless”); *Grimes v. Comm’r*, 806 F.2d 1451, 1454 (9th Cir. 1986) (per curiam).

Avery’s contention that the tax court judge was biased is not supported by the record. *See Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 712 (9th Cir. 1993) (adverse rulings alone are insufficient to demonstrate judicial bias).

Avery’s remaining contentions are unpersuasive.

AFFIRMED.