

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 19 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RONALD CRAIG FISH,

No. 15-73389

Petitioner-Appellant,

Tax Ct. No. 10691-13

v.

MEMORANDUM*

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

Appeal from a Decision of the
United States Tax Court

Submitted October 17, 2017**
San Francisco, California

Before: IKUTA and HURWITZ, Circuit Judges, and MCSHANE,*** District
Judge.

Ronald Craig Fish deducted losses sustained in his individual retirement
account (“IRA”) on his 2009 tax return. The IRS disallowed the deduction,

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

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

*** The Honorable Michael J. McShane, United States District Judge for
the District of Oregon, sitting by designation.

determined a deficiency, and imposed an accuracy-related penalty under I.R.C. § 6662. The Tax Court sustained the deficiency and the penalty. We have jurisdiction over Fish’s appeal of the Tax Court judgment under I.R.C. § 7482(a)(1) and affirm.

The only issue on appeal is whether Fish may deduct unrelated business taxable income (“UBTI”) losses sustained by two partnerships held in an IRA from his personal taxable income.¹ Although IRAs are generally tax-exempt, they are “subject to the taxes imposed by section 511” on UBTI of organizations in which they invest. I.R.C. § 408(e)(1); *see* I.R.C. § 511. The Tax Code provides that UBTI losses may be carried forward or backward to deduct against gains within an IRA. *See* I.R.C. § 512(b)(6); *see also* Treas. Reg. § 1.512(b)–(1)(e)(1) (“The net operating loss deduction provided in section 172 shall be allowed in computing unrelated business taxable income.”). But, the Code does not provide for the pass-through of UBTI losses to an IRA beneficiary’s personal tax return. *See* I.R.C. §§ 511–13. We therefore affirm the judgment of the Tax Court.

AFFIRMED.

¹ Because Fish does not “clearly and distinctly” challenge the accuracy-related penalty in his opening brief, that issue is waived. *See Avila v. L.A. Police Dep’t*, 758 F.3d 1096, 1101 (9th Cir. 2014) (citation omitted).