

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 28 2017

FOR THE NINTH CIRCUIT

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

ROBERT TALBOT,

Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent-Appellee.

No. 17-70826

Tax Ct. No. 26598-14L

MEMORANDUM\*

Appeal from a Decision of the  
United States Tax Court

Submitted December 18, 2017\*\*

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

Robert Talbot appeals from the Tax Court's decision, following a bench trial, permitting the Commissioner of Internal Revenue to proceed with an action to collect Talbot's federal income tax liability for tax years 2001, 2003, 2004, and 2005. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review de novo

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\* 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).

conclusions of law and for clear error questions of fact. *Johanson v. Comm'r*, 541 F.3d 973, 976 (9th Cir. 2008). We affirm.

The Tax Court properly determined that the Commissioner sent a final notice of deficiency to Talbot's last known address for each tax year in question. *See* 26 U.S.C. § 6212(b)(1) (a notice of deficiency addressed to the taxpayer's last known address suffices for purposes of notice); *United States v. Zolla*, 724 F.2d 808, 810 (9th Cir. 1984) (holding that Postal Form 3877 is highly probative and is sufficient, in the absence of contrary evidence, to show that the notice of deficiency was properly made).

We reject as unsupported by the record Talbot's contention that the Tax Court failed to consider his testimony.

We do not consider issues that were not raised in the opening brief. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

**AFFIRMED.**