

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 22 2021

FOR THE NINTH CIRCUIT

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

DOUGLAS H. CUTTING,

No. 21-70235

Petitioner-Appellant,

Tax Ct. No. 15370-17

v.

MEMORANDUM\*

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent-Appellee.

Appeal from a Decision of the  
United States Tax Court

Submitted December 14, 2021\*\*

Before: WALLACE, CLIFTON, and HURWITZ, Circuit Judges.

Douglas H. Cutting appeals from the Tax Court's decision upholding the Commissioner of Internal Revenue's determination of deficiencies. We have jurisdiction under 26 U.S.C § 7482(a)(1). We review de novo the Tax Court's legal conclusions and for clear error its factual determinations. *Hardy v. Comm'r*,

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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).

181 F.3d 1002, 1004 (9th Cir. 1999). We affirm.

The Tax Court properly determined that Cutting did not meet his burden of proving that he was entitled to a foreign earned income exclusion. *See* 26 U.S.C § 911(d)(1) (definition of “qualified individual”); *id.* § 911(d)(3) (definition of “tax home”); *Palmer v. IRS*, 116 F.3d 1309, 1312 (9th Cir. 1997) (explaining that the IRS’s deficiency determinations are entitled to the presumption of correctness unless the taxpayer submits competent evidence that the assessments were “arbitrary, excessive or without foundation”); *cf. Folkman v. United States*, 615 F.2d 493, 496 (9th Cir. 1980) (holding the tax home for airline pilots having dual employers and places of employment was the city of the airline’s duty base).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**