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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BRADLEY KASTELLE,</p> <p style="text-align: center;">Petitioner - Appellant,</p> <p style="text-align: center;">v.</p> <p>COMMISSIONER OF INTERNAL REVENUE,</p> <p style="text-align: center;">Respondent - Appellee.</p>
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No. 08-72014

Tax Ct. No. 15430-06L

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Bradley Kastelle appeals pro se from the Tax Court’s summary judgment allowing the Commissioner of Internal Revenue (“Commissioner”) to proceed with

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

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

its collection actions, and from the Tax Court's order denying Kastelle's motion to vacate summary judgment. We have jurisdiction pursuant to 26 U.S.C. § 7482(a). We review de novo the Tax Court's grant of summary judgment, *Miller v. Comm'r*, 310 F.3d 640, 642 (9th Cir. 2002), and for an abuse of discretion its denial of the motion to vacate, *Thomas v. Lewis*, 945 F.2d 1119, 1123 (9th Cir. 1991). We affirm.

The Tax Court properly granted the Commissioner's summary judgment motion because Kastelle failed to raise any genuine issue of material fact and the record supports the Commissioner's determination that the collection actions should proceed. *See Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993) (per curiam) (affirming summary judgment where Commissioner's evidence supported its assessments and taxpayers relied upon conclusory allegations unsupported by facts).

The record does not support Kastelle's contentions that the Tax Court improperly conducted a *de novo* trial and considered evidence outside the administrative record.

The Tax Court did not abuse its discretion by denying Kastelle's motion to vacate. *See Thomas*, 945 F.2d at 1123-24 (determining that the denial of a motion

to vacate was not an abuse of discretion where moving party provided no basis for vacating earlier order).

AFFIRMED.