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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GARY R. CLARK,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>COMMISSIONER OF INTERNAL REVENUE,</p> <p>Respondent - Appellee.</p>

No. 08-74172

Tax Ct. Nos. 19473-06L
8752-07L

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Gary R. Clark appeals pro se from the Tax Court’s decision sustaining the determination of the Commissioner of Internal Revenue (“Commissioner”) to proceed with the collection of Clark’s income tax liabilities for 1998–2003. We have jurisdiction under 26 U.S.C. § 7482(a). We review de novo the Tax Court’s

* 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).

legal conclusions and for clear error its factual findings. *Fargo v. Comm'r*, 447 F.3d 706, 709 (9th Cir. 2006). We affirm.

Clark's underlying tax liability is not properly at issue because, during the agency proceedings, he did not contest receiving the deficiency notices. *See* 26 U.S.C. § 6330(c)(2)(B) (allowing a taxpayer to challenge underlying tax liability during a collection due process ("CDP") hearing only if the taxpayer did not receive statutory notice of the deficiency or did not otherwise have an opportunity to dispute such liability). Accordingly, Clark's related contentions concerning the standard of review and the Commissioner's duty to prove liability are foreclosed.

Contrary to Clark's contention, the Commissioner did not improperly deny him a face-to-face hearing based on his failure to identify relevant, nonfrivolous issues for the hearing. *See* 26 C.F.R. § 301.6330-1(d)(2)(A-D6) (2003) ("A CDP hearing may, but is not required to, consist of a face-to-face meeting.").

The Appeals officer who verified compliance under 26 U.S.C. § 6330 had delegated authority to do so. *See Hughes v. United States*, 953 F.2d 531, 536 (9th Cir. 1992) (stating that the Secretary has properly delegated authority to local IRS employees to carry out the tasks associated with tax collection and levy power).

Clark's remaining contentions are unpersuasive.

AFFIRMED.