

DEC 27 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RONALD D. NEUFELD and NADINE M. NEUFELD,</p> <p style="text-align: center;">Petitioners - Appellants,</p> <p style="text-align: center;">v.</p> <p>COMMISSIONER OF INTERNAL REVENUE,</p> <p style="text-align: center;">Respondent - Appellee.</p>

No. 08-74547

Tax Ct. No. 8101-06

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted December 14, 2010**

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

Ronald D. Neufeld and Nadine M. Neufeld appeal pro se from the Tax Court’s decision sustaining the assessment of the Commissioner of Internal Revenue (“Commissioner”) regarding income tax deficiencies and accuracy-related

* 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).

penalties for 2001 and 2002, and from the Tax Court's imposition of a \$1,000 penalty for maintaining a frivolous position. We have jurisdiction under 26 U.S.C. § 7482(a). We review de novo the Tax Court's legal conclusions and for clear error its factual findings, *Kelley v. Comm'r*, 45 F.3d 348, 350 (9th Cir. 1995), and for an abuse of discretion its imposition of a penalty, *Larsen v. Comm'r*, 765 F.2d 939, 941 (9th Cir. 1985) (per curiam). We affirm.

Contrary to the Neufelds' contention, their substantial understatement of tax liability constituted an underpayment for purposes of the accuracy-related penalties. *See* 26 U.S.C. §§ 6662(a), (b), (d), 6664(a).

The Tax Court's finding that the underpayment was due to negligence was not in clear error given the Neufelds' admissions that they did not review or discuss the tax documents prepared for them. *See Hansen v. Comm'r*, 471 F.3d 1021, 1028-29 (9th Cir. 2006) (explaining that the negligence inquiry looks to the extent of the taxpayer's effort to assess the proper tax liability and the correctness of claimed deductions and exclusions).

The Tax Court did not abuse its discretion by imposing a penalty because the Neufelds were warned that their arguments were frivolous but persisted with them. *See* 26 U.S.C. § 6673(a)(1). The Neufelds had ample opportunity to respond to the Commissioner's request for a penalty before a penalty was imposed, and we are

unpersuaded that the penalty was otherwise unconstitutional. *See SEC v. McCarthy*, 322 F.3d 650, 659 (9th Cir. 2003) (stating that due process requires notice and an opportunity to be heard); *Larsen*, 765 F.2d at 941 (rejecting as frivolous the argument that the § 6673 penalty provision infringes upon First Amendment rights).

The Neufelds' remaining contentions are unpersuasive.

AFFIRMED.