

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ALBERT M. KUN,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>COMMISSIONER OF INTERNAL REVENUE,</p> <p>Respondent - Appellee.</p>

No. 08-74702

Tax Ct. No. 11988-06L

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted December 14, 2010**

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

Albert M. Kun appeals pro se from the Tax Court’s decision concluding that the Commissioner of Internal Revenue (“Commissioner”) did not abuse his discretion by rejecting Kun’s offer in compromise and from the Tax Court’s order imposing of a penalty sua sponte under 26 U.S.C. § 6673. We have jurisdiction

* 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).

under 26 U.S.C. § 7482(a). On appeal from the Tax Court, we review for an abuse of discretion the Commissioner's decision whether to accept an offer in compromise. *Keller v. Comm'r*, 568 F.3d 710, 716 (9th Cir. 2009). We review for clear error the factual findings underlying the Tax Court's imposition of a penalty. *Id.* We affirm.

Kun's contention that the Commissioner abused his discretion by rejecting Kun's offer in compromise without considering the hypothetical effect of a bankruptcy filing is unavailing because Kun raised the issue for the first time on appeal to the Tax Court. *See* 26 C.F.R. § 301.6330-1(f)(2), Q-F3 & A-F3 (on appeal, a taxpayer may only ask the court to consider an issue that was properly raised at the collection due process hearing); *see also Portland GE Co. v. Bonneville Power Admin.*, 501 F.3d 1009, 1023 (9th Cir. 2007) ("As a general rule, we will not review challenges to agency action raised for the first time on appeal.").

The Tax Court was not required to warn Kun before imposing a § 6673 penalty, and the record supports the Tax Court's conclusion that Kun's appeal was frivolous. *See Carter v. Comm'r*, 784 F.2d 1006, 1009 (9th Cir. 1986) (discussing Tax Court's imposition of a penalty under § 6673).

AFFIRMED.