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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSEPH R. BANISTER,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>COMMISSIONER OF INTERNAL REVENUE,</p> <p>Respondent - Appellee.</p>
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No. 09-70775

Tax Ct. No. 1356-06

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Joseph R. Banister appeals pro se from the tax court’s decision upholding the Commissioner of Internal Revenue’s determination of a deficiency and an addition to tax in connection with unreported income for tax year 2002. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review de novo the tax court’s legal

* 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).

conclusions, and for clear error its findings of fact. *Hardy v. Comm'r*, 181 F.3d 1002, 1004 (9th Cir. 1999). We affirm.

The tax court properly upheld the tax determination because the Commissioner presented the “minimal factual foundation” necessary to link Banister to the receipt of unreported income, *Palmer v. IRS*, 116 F.3d 1309, 1312 (9th Cir. 1997), and Banister failed to submit any evidence “showing that the deficiency was arbitrary or erroneous,” *Hardy*, 181 F.3d at 1005.

The tax court properly upheld the late-filing addition to tax because Banister did not file a tax return for 2002 or provide any evidence suggesting reasonable cause for his failure to do so. *See* 26 U.S.C. § 6651(a)(1).

Banister’s remaining contentions are unpersuasive.

AFFIRMED.