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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLOS W. SMITH,

Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

No. 09-71966

Tax Ct. Nos. 10907-08
21318-08

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted February 15, 2011**

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

Carlos W. Smith appeals pro se from the tax court's order following a bench trial upholding the Commissioner of Internal Revenue's deficiencies and penalties for tax years 2005 and 2006. We have jurisdiction under 26 U.S.C. § 7482(a)(1).

* 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).

We review de novo the tax court's legal conclusions, and for clear error its factual findings. *Johanson v. Comm'r*, 541 F.3d 973, 976 (9th Cir. 2008). We affirm.

The tax court properly upheld Smith's tax deficiencies because he did not substantiate his claimed deductions with any evidence despite being given numerous opportunities to do so. *See Norgaard v. Comm'r*, 939 F.2d 874, 877 (9th Cir. 1991) (the taxpayer carries the burden of establishing entitlement to a deduction).

The tax court properly upheld Smith's penalties because he failed to meet his burden of showing that the underpayment was not a result of negligence. *See* 26 U.S.C. § 6662(a); *Pahl v. Comm'r*, 150 F.3d 1124, 1131 (9th Cir. 1998).

Smith's contentions that he was retaliated against are unavailing. *See Karne v. Comm'r*, 673 F.2d 1062, 1064 (9th Cir. 1982) (courts will look behind the deficiency notice to determine the Commissioner's motives only in extremely rare cases involving unconstitutional conduct).

Smith's remaining contentions are unpersuasive.

AFFIRMED.