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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DAVID K. WINTERROTH,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>COMMISSIONER OF INTERNAL REVENUE,</p> <p>Respondent - Appellee.</p>

No. 11-72377

Tax Ct. No. 4804-09L

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted June 26, 2012**

Before: SCHROEDER, HAWKINS, and GOULD, Circuit Judges.

David K. Winterroth appeals pro se from the tax court’s summary judgment in favor of the Commissioner of Internal Revenue (“Commissioner”) in Winterroth’s action challenging a federal tax lien to collect penalties assessed

* 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).

against him for filing a frivolous federal income tax return. We have jurisdiction under 26 U.S.C. § 7482(a). We review de novo the Tax Court's grant of summary judgment. *Miller v. Comm'r*, 310 F.3d 640, 642 (9th Cir. 2002). We affirm.

The Tax Court properly concluded that, in light of Winterroth's 2006 return reporting zero income, zero tax due, and requesting a refund for the amount withheld by his employer despite having earned wages, the penalty issued against Winterroth was appropriate. *See* 26 U.S.C. § 6702(a) (civil penalty of \$5,000 for filing a frivolous tax return); *Olson v. United States*, 760 F.2d 1003, 1005 (9th Cir. 1985) (per curiam) (a form 1040 filed to obtain a tax refund is a tax return).

The Tax Court properly granted summary judgment because the record supports the Commissioner's determination that the collection of the penalty should proceed, and Winterroth failed to raise a genuine dispute of material fact. *See Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993) (memorandum).

Winterroth's contention that he was denied due process due to bias by both the Internal Revenue Service and the Tax Court is not supported by the record.

Winterroth's remaining contentions, including that he is not subject to the income tax laws, are unpersuasive.

AFFIRMED.