

JUL 25 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANKLIN M. SYKES; ERLINDA L.
SYKES,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 10-72394

Tax Ct. No. 7275-08

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted July 17, 2012**

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

Franklin M. Sykes and Erlinda L. Sykes appeal pro se from the Tax Court's decision, after a bench trial, upholding the Commissioner of Internal Revenue's determination of an income tax deficiency and a penalty for tax year 2004. We

* 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).

have jurisdiction under 26 U.S.C. § 7482(a)(1). We review de novo the Tax Court's legal conclusions and for clear error its factual determinations. *Kelley v. Comm'r*, 45 F.3d 348, 350 (9th Cir. 1995). We affirm.

The Tax Court did not clearly err in determining that the Sykeses were not entitled to their claimed casualty deduction. *See Sparkman v. Comm'r*, 509 F.3d 1149, 1159 (9th Cir. 2007) (taxpayer bears burden of clearly showing right to claimed deduction, and Tax Court's factual determination that taxpayer has failed sufficiently to substantiate deduction must be upheld unless clearly erroneous); 26 C.F.R. § 1.165-7(a)(2)(i) (explaining that "the fair market value of the property immediately before and immediately after the casualty shall generally be ascertained by competent appraisal").

We do not consider whether the Tax Court erred by sustaining the accuracy-related penalty imposed under 26 U.S.C. § 6662 because the issue was not argued in the opening brief. *See Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1033 (9th Cir. 2008) (deeming waived issues not raised in the opening brief).

The Sykeses' remaining contentions, including those concerning the Romero appraisal report, are unpersuasive.

AFFIRMED.