

SEP 21 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANDREW LEYVA,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 11-71648

Tax Ct. No. 25427-09

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Andrew Leyva appeals pro se from the Tax Court’s decision, following a bench trial, upholding the Commissioner of Internal Revenue’s (“CIR”) determination of a deficiency and additions for tax year 2006 and imposing a

* 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).

sanction for making frivolous arguments. We have jurisdiction under 26 U.S.C. § 7482(a). 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 review for an abuse of discretion the Tax Court's imposition of a penalty under 26 U.S.C. § 6673. *Grimes v. Comm'r*, 806 F.2d 1451, 1454 (9th Cir. 1986) (per curiam). We affirm.

The Tax Court properly upheld the CIR's determination of a tax deficiency and additions to tax over Leyva's contentions that no law requires him to pay the income tax imposed by the CIR, and that, because he filed a Form 1040 reporting zero income, the CIR is prohibited from collecting any income taxes from him. *See, e.g., Wilcox v. Comm'r*, 848 F.2d 1007, 1008 (9th Cir. 1988) (rejecting similar contentions).

The Tax Court did not abuse its discretion by imposing a § 6673 sanction against Leyva for taking frivolous positions after warning Leyva that such conduct could lead to sanctions. *See Grimes*, 806 F.2d at 1454.

The CIR's motion for sanctions is denied.

Leyva's motion for a stay pending resolution of this appeal is denied as moot.

AFFIRMED.