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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KENNETH A. MANDEL,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>COMMISSIONER OF INTERNAL REVENUE,</p> <p>Respondent - Appellee.</p>

No. 11-72652

Tax Ct. No. 361-09

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Kenneth A. Mandel appeals pro se from the Tax Court’s decision denying his request for litigation and administrative costs under 26 U.S.C. § 7430. We have jurisdiction under 26 U.S.C. § 7482(a). We review for an abuse of discretion.

* 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).

Huffman v. Comm’r, 978 F.2d 1139, 1143 (9th Cir. 1992). We affirm.

The Tax Court did not abuse its discretion in determining that Mandel was not the prevailing party because the Commissioner’s position on the accuracy-related penalty for tax year 2005, for negligence under 26 U.S.C. § 6662(a), was substantially justified, given Mandel’s failure to turn over his contemporaneous basis workpapers until seven months after he filed his petition for review. *See* 26 U.S.C. § 7430(c)(4)(B)(i) (a party is not a “prevailing party” if the Commissioner’s position was substantially justified); 26 C.F.R. § 301.7430-5(c)(1) (“A significant factor in determining whether the position of the Internal Revenue Service is substantially justified as of a given date is whether, on or before that date, the taxpayer has presented all relevant information under the taxpayer’s control . . . to the appropriate Internal Revenue Service personnel.”).

AFFIRMED.