

JUN 20 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VINCE FLAHERTY,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 11-71336

Tax Ct. No. 5903-09L

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted June 18, 2013**

Before: TALLMAN, M. SMITH, and HURWITZ, Circuit Judges.

Vince Flaherty appeals pro se from Tax Court's decision dismissing for failure to prosecute his petition challenging the Commissioner of Internal Revenue's determination to collect by levy unpaid federal income taxes for 1996.

* 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 have jurisdiction under 26 U.S.C. § 7482(a)(1). We review for an abuse of discretion, *Noli v. Comm'r*, 860 F.2d 1521, 1527 (9th Cir. 1988), and we affirm.

The Tax Court did not abuse its discretion in dismissing Flaherty's petition for failure to prosecute given Flaherty's failure to appear for trial and his history of delay, especially since it had already granted two trial continuances and Flaherty had been warned multiple times that his case could be dismissed. *See id.* (noting "dismissal for failure properly to prosecute will normally arise where a party fails to appear at trial"); *see also* T.C. R. 123(a), (b) (Tax Court may dismiss a case and enter a decision against a petitioner where the petitioner fails properly to prosecute or fails to proceed as required by the Tax Court).

Flaherty's contention that the dismissal of his petition violated his due process rights and his right to trial is unpersuasive.

We grant Flaherty's motion to file a substitute reply, and instruct the Clerk to file the reply brief submitted on March 19, 2013.

AFFIRMED.