

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

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

DANNY FABRICANT,

No. 17-71284

Petitioner-Appellant,

Tax Ct. No. 25843-14

v.

MEMORANDUM*

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

Appeal from a Decision of the
United States Tax Court

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Danny Fabricant appeals pro from the Tax Court's decision denying his request for litigation costs under 26 U.S.C. § 7430. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review for an abuse of discretion. *Huffman v. Comm'r*, 978 F.2d 1139, 1143 (9th Cir. 1992). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The Tax Court did not abuse its discretion by denying Fabricant's request for litigation costs because the Commissioner's position was substantially justified, given Fabricant's initial failure to provide the Commissioner with all relevant information to establish that he was not self-employed during tax year 2011. *See* 26 U.S.C. § 7430(c)(4)(B)(i) (a party is not a "prevailing party" for purposes of an award of costs if the Commissioner's position was substantially justified); 26 C.F.R. § 301.7430-5(d)(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."); *see also United States v. Yochum (In re Yochum)*, 89 F.3d 661, 672-72 (9th Cir. 1996) (holding that the government's position was substantially justified because the taxpayer failed to provide sufficient evidence in support of his position prior to the issuance of the notice of deficiency).

AFFIRMED.