

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 17 2025

FOR THE NINTH CIRCUIT

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

RICHARD JOHN CARDULLA,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 24-31

Tax Ct. No. 17579-18

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted July 15, 2025**

Before: SILVERMAN, TALLMAN, and BUMATAY, Circuit Judges.

Richard John Cardulla appeals pro se from the Tax Court's decision, following a bench trial, upholding in part the Commissioner of Internal Revenue's determination of income tax deficiencies for tax years 2014 and 2015. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review de novo the Tax Court's

* 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).

legal conclusions and for clear error its factual findings. *DHL Corp. & Subsidiaries v. Comm'r*, 285 F.3d 1210, 1216 (9th Cir. 2002). We affirm.

The Tax Court did not clearly err in determining that X-Way Delta, LLC, held its property for investment because Cardulla did not establish that X-Way Delta operated as a trade or business in 2014 or 2015. *See Polakis v. Comm'r*, 91 T.C. 660, 669-70 (1988) (listing the factors considered to determine whether a real estate venture constitutes a trade or business); *see also Indep. Elec. Supply, Inc. v. Comm'r*, 781 F.2d 724, 726-27 (9th Cir. 1986) (providing the standard of review).

The Tax Court did not clearly err in determining that Cardulla was not entitled to the claimed deductions for expenses and depreciation because Cardulla failed to meet his burden of substantiating the deductions. *See Sparkman v. Comm'r*, 509 F.3d 1149, 1159 (9th Cir. 2007) (providing the standard of review and stating that the taxpayer bears the burden of showing the right to a claimed deduction and must keep sufficient records to substantiate deductions).

The Tax Court properly concluded that Cardulla failed to provide sufficient evidence of his claimed deductions to shift the burden of proof to the Commissioner to disprove his claimed deductions. *See* 26 U.S.C. § 7491(a) (requirements for shifting burden of proof to Commissioner).

Cardulla's contentions that his witnesses were disallowed and that the Tax Court inappropriately required him to seek leave to file a post-trial reply brief are

unsupported by the record.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.