

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF

CERTIORARI - EXHIBITS

9th Circuit Case No. 20-70262

March 7, 2022

EXHIBIT “A”

**UNITED STATES COURT OF APPEALS
NINTH CIRCUIT**

JUDGMENT - Case 20-70262

FILED**NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT****SEP 23 2021**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATRICK COMBS, AKA Patrick Davy
Combs,

Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

No. 20-70262

Tax Ct. No. 22748-14

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted September 14, 2021**

Before: PAEZ, NGUYEN, and OWENS, Circuit Judges.

Patrick Combs appeals pro se from the Tax Court's decision, following a bench trial, upholding the determinations of deficiency, penalties, and an addition by the Commissioner of Internal Revenue regarding his federal income taxes for the 2010, 2011, and 2012 tax years. We have jurisdiction under 26 U.S.C.

* 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).

§ 7482(a)(1). We review de novo the Tax Court's legal conclusions and for clear error its factual findings. *Meruelo v. Comm'r*, 691 F.3d 1108, 1114 (9th Cir. 2012). We affirm.

The Tax Court properly granted summary judgment for the Commissioner regarding Combs's assessed tax liabilities for the 2010 and 2011 tax years because the Commissioner introduced evidence of its deficiency determinations, and Combs failed to raise a genuine dispute of material fact as to whether the determinations were invalid. *See Miller v. Comm'r*, 310 F.3d 640, 642 (9th Cir. 2002) (setting forth standard of review); *Palmer v. IRS*, 116 F.3d 1309, 1312 (9th Cir. 1997) (explaining that the IRS's deficiency determinations are entitled to the presumption of correctness unless the taxpayer submits competent evidence that the assessments were "arbitrary, excessive, or without foundation"); *see also United States v. Basye*, 410 U.S. 441, 447 (1973) ("[I]ncome is taxed to the party who earns it and that liability cannot be avoided through an anticipatory assignment of that income[.]").

The Tax Court did not clearly err by finding that Combs received and failed to report constructive dividends for the 2010 through 2012 tax years because this finding was supported by ample evidence in the record. *See Hardy v. Comm'r*, 181 F.3d 1002, 1004-05 (9th Cir. 1999) ("If the Commissioner introduces some evidence that the taxpayer received unreported income, the burden shifts to the

taxpayer to show by a preponderance of the evidence that the deficiency was arbitrary or erroneous."); *P.R. Farms, Inc. v. Comm'r*, 820 F.2d 1084, 1086-87 (9th Cir. 1987) (outlining the two-part test for determining the existence of a constructive dividend and affirming the finding of a dividend where the record supported the determination).

The Tax Court did not clearly err by finding that Combs was liable for accuracy-related penalties for inaccurately reporting his income for the 2010 through 2012 tax years. *See* 26 U.S.C. § 6662(a), (b); *Hansen v. Comm'r*, 471 F.3d 1021, 1028-29 (9th Cir. 2006) (explaining that an accuracy-related penalty on underpayment of tax may be assessed due to taxpayer's negligence).

We do not consider whether the Tax Court erred in sustaining the addition for failure to file a timely return for 2011 or imposing a penalty under § 6673 for maintaining frivolous positions because Combs does not address these issues in his opening brief. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (arguments raised for the first time in a reply brief are deemed waived).

We reject as meritless Combs's contention that the Tax Court engaged in fraud.

AFFIRMED.

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EXHIBIT "B"

**UNITED STATES COURT OF APPEALS
NINTH CIRCUIT**

DENIAL OF PANEL RE-HEARING

Case No. 20-70262

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAN 3 2022

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

PATRICK COMBS, AKA Patrick Davy
Combs,

Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

No. 20-70262

Tax Ct. No. 22748-14

ORDER

Before: PAEZ, NGUYEN, and OWENS, Circuit Judges.

Combs's petition for panel rehearing (Docket Entry No. 30) is denied.

No further filings will be entertained in this closed case.

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CERTIORARI - EXHIBITS

9th Circuit Case No. 20-70262

March 7, 2022

EXHIBIT "C"

IRS' FIRST APPOINTMENT LETTER

RE: GOOD THINKING COMPANY, INC.

Internal Revenue Service
Small Business and Self-Employed

Date: May 29, 2012

Good Thinking Company, Inc.
2240 Encinitas Blvd #D-140
San Diego CA 92024

Department of the Treasury
1 Civic Center
Suite 400
San Marcos CA 92069-2918

Taxpayer Identification Number:
33-0875715

Tax Year:
2010

Form Number:
1120

Person to Contact:
Dorothy Nordby

Employee Identification Number:
1000246236

Contact Telephone Number:
760-736-7424

Fax Number:
760-739-7418

CONFIRMATION

Dear Good Thinking Company, Inc.:

This letter is provided to confirm an appointment to examine your federal income tax return for the year(s) shown above. The appointment will be held:

Place: 1 Civic Center
Suite 400
San Marcos CA 92069-2918

Date: 06/19/2012

Time: 9:00 AM

WHAT TO EXPECT AT THE EXAMINATION

Generally an examination is scheduled to last two to four hours. After the completion of the initial interview, additional information still may be needed. You may submit this information by mail or by scheduling a follow-up appointment. When the examination is completed, you may owe additional tax, be due a refund, or there may be no change to your return.

WHO MAY COME TO THE EXAMINATION

If you filed a joint return, you and/or your spouse may attend. You also may elect to have someone else represent you. If you will not attend with your representative, you must provide a completed Form 2848, *Power of Attorney*, or Form 8821, *Tax Information Authorization*, by the start of the examination. You can get these forms from our office.

over

Letter 2206 (DO) (Rev. 12-1999)
Cat. No. 63743E

WHAT WILL HAPPEN IF YOU DO NOT KEEP THE APPOINTMENT

If you do not keep this appointment or provide the requested records, we will issue an examination report showing additional tax due. Therefore, it is to your advantage to keep your appointment and to provide the records. If you are uncertain about the records needed or the examination process, please call us at the number listed above.

Sincerely Yours,

Dorothy M. Nordby
Dorothy M. Nordby

Revenue Agent

A Enclosures:
Publication 1
Notice 609